



# **Lots of Opportunity: Using Oregon's Land Banking Legislation to Spur Brownfield Redevelopment**

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*“Both people and land lie at the heart of community. It is the people who create the relationships, the dreams, the spirit, and the culture. It is the land that creates the place and the space. We are stewards of land, and it supports and protects us; we neglect and abuse land, and it soon mirrors our fractured community” (Alexander, 10).*



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## Abstract

Defined by the EPA as “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination,” brownfields are land parcels wracked with barriers, but full of opportunity. Oregon is estimated to house over 13,000 brownfield sites, and to proactively address brownfield remediation, the State of Oregon passed House Bill 2734 in 2015. Signed into effect January 1, 2016, this bill is enabling legislation for jurisdictions to develop local land bank authorities that “shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties” (S. 2734 4.1, 2015). Under HB 2734, land banks for this purpose are immune from liability for past contamination.

Land banking for brownfields is different than a traditional land bank, in that regular land banks manage tax delinquent and foreclosed properties. One of the largest barriers to taking on brownfields is the fear of responsibility, which is what makes HB 2734 a compelling piece of legislation that could change the national conversation around how states and cities facilitate brownfield redevelopment. Although Oregon cities now have the legal backing to establish a land bank authority, the lack of familiarity with the legislation and literature available makes it difficult to expect many cities to immediately take this step towards addressing brownfields with new uncharted tools.

Using a survey of over 109 Oregon cities, this research uses the state of Oregon as the study area to examine how land banks for brownfields might be created after the legislation is enacted, how these land banks may address the barriers that keep brownfields in disrepair, and how land banking as a brownfield tool is different than a regular land bank, or other agency.

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## Understanding Theories and Drivers of Abandoned Space

With a greater percentage of the population living in urban centers than rural areas for the first time in human history, the importance of responsible land use decisions is becoming more critical than ever. These land use decisions can be based on increasing density, or simply ensuring that no land is wasted through appropriate infill development. Unfortunately, under-utilized land is not uncommon, and is typically found in the form of a brownfield. Defined by the Environmental Protection Agency (EPA) as “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination,” this EPA definition includes both known contaminants as well as suspected contaminants, which can occur from previous land uses such as manufacturing or energy production (EPA, 2011). The word brownfield rose to prominence in 1992, and was used as an alternative to “contaminated” or “derelict.” Both of these words have the connotation of being irreparable, whereas “brownfield” was developed as a semantic counterpart to greenfield, implying that the site has an opportunity to become a healthy and habitable space again (DeSousa, 2004). Brownfields are an exemplar of sustainable planning problems because the redevelopment of each brownfield site is a microcosm of sustainability’s three E’s, requiring attention to economics, the environment, and social equity.

Brownfields exist across the country and current research is seeking to quantify and qualify methods through which these sites can become socially productive spaces. Constructing a generalized framework of best-management practices as a toolkit for practitioners and developers has been a crucial area of recent research, given the scale of the brownfield problem in the United States alone. As of 2012, more than 500,000 brownfield sites exist in the United States. These sites exist all over the country, with the highest concentration in the Northeast in former highly industrialized and manufacturing-based states like Michigan or Pennsylvania (Golden, 2012). More specifically, the state of Oregon is actively seeking brownfield tools to tackle the estimated 13,500 brownfield sites within state lines (Figure 1). These sites present an immense opportunity in terms of creating spaces for the public good and have been the source of much investigation over the last few years. Maul, Foster and Alongi, a Portland environmental consulting firm, conducted a regional scoping project for Portland Metro in 2012, and found that there may be up to 2,300 brownfield properties in the Metro region alone covering approximately 6,300 acres of land.

This represents approximately seven percent of all commercial, mixed-use, and industrial-zoned land within the Urban Growth Boundary. Approximately half of these sites are in, or within 1,000 feet of environmental areas, such as wetlands and streams. Brownfields are also three times as likely to be located in a community designated by Metro's Equity Composite as underserved. In addition, Maul, Foster and Alongi conducted a Brownfield Policy in Oregon workshop in 2012 and found that major policy challenges at the local level included cleanup cost, lack of buyer knowledge, and the *red light dilemma*, or when properties with high cleanup costs relative to redevelopment value are not financially feasible to develop. These issues were noted as key issues in 2012, and were the spark for conversation around land banking for brownfields as a potential solution.



Fig. 1 Baker County Lime Cement Plant  
Source: <http://prepare-and-protect.net/2015/09/>

To proactively address brownfields, Oregon passed House Bill 2734 as part of the 78th Oregon Legislative Assembly 2015 Session. Signed into effect January 1, 2016, this bill is enabling legislation for the development of land banking authorities (LBAs) on the part of local governments to tackle local brownfields (Appendix A)(Paull & Otto, 2014). While legislation for land banking authorities has been established in several states, these land banks focus on tax delinquent properties instead of brownfields, making Oregon's legislation the first of its kind. Since HB 2734 is new, much about land banking for brownfields still remains unknown.

While research exists supporting (1) the benefits of brownfield redevelopment or the benefits of land banking, and (2) the significant threat economic and political barriers pose to brownfield redevelopment, there is no comprehensive documentation quantifying how land banks for brownfields are created after the legislation is enacted, or how land banks for brownfields are more helpful than other tools. Since the bill asks jurisdictions to create new public entities with little guidance, cities may be averse to being the first city to implement a land bank and incur unforeseen risk. Additionally, Oregon's foray into land banking for brownfields is the first legislation of its kind across the country, and has the potential to set a precedent for other states that are considering land banking as a brownfield tool. Compiling a comprehensive understanding of where land banking lays on the spectrum of brownfield tools, as well as understanding how land banking works in the first place, is a critical first step in moving a landmark piece of legislation from writing to reality in Oregon.

### HB 2734 Summary

Under this bill, Oregon cities can establish a land bank specifically for brownfield properties. The land bank "shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, re-utilizing or restoring brownfield properties." While the enabling powers to establish a land bank are provided, it is up to each city whether or not they want to establish an LBA.

In order to better understand the current climate around land banking for brownfields, the following research seeks to answer:

- What are Oregon jurisdictions' primary barriers to brownfield redevelopment?
- Does the new land banking legislation have the ability to address the barriers reported?

Additionally, this research will demonstrate whether jurisdictions know about the land banking legislation, provide key guidance for establishing a brownfield land banking authority, and make recommendations for how to increase the viability of land banking for brownfields in the state.

To address these topics, this report will explore in order: 1) the underlying theories and drivers of abandoned space to understand how brownfields develop, 2) an overview of the current brownfield policy context in Oregon, including an explanation of the role of Urban Renewal Agencies, a breakdown of HB 2734, and land banking examples, 3) the results of a survey gauging brownfield redevelopment and attitudes towards land banking, and 4 ) recommendations and tools for how to leverage HB 2734 for its best use.

To begin, the theories and causes of abandoned space, legal framework of brownfields, and exploration of land banking basics will be explored.

## Theories and Causes of Abandoned Space

While many theories exist to explain abandoned space and brownfield development, a common theory to relate the locational high-density correlation of brownfield sites with market forces is Alonso's monocentric model theory. This theory suggests that historically, part of the immensity of the brownfield problem is the "tendency of manufacturing enterprises to follow the exodus of higher-income groups and the desire to acquire cheaper land and better infrastructure in the periphery" (DeSousa, 2005). According to the monocentric model theory and basic bid-rent curve, rent is higher closer to the central business district (CBD), although this can be different in parts of Oregon (Figure 2). Commercial space near the CBD has the steepest bid rent curve, while manufacturing has the second highest. Due to the high costs of manufacturing locating itself closer to the CBD, relocating onto the periphery of the city becomes more profitable. This exodus can cause a surge in brownfields once bid rent becomes too expensive in a CBD. As manufacturing industries begin to move outside the city center, they leave behind abandoned land that include grounds contaminated with chemicals and other hazards. Or, in some cases industrial development occurred at the fringe of the city, and then the city grew beyond that fringe. For example, Portland's known contaminated sites tend to be concentrated in older parts of the metropolitan area (Figure 3). However, many new sites that are suspected brownfields are located in the more recently developed areas of the metropolitan region (Paull, Evan, and Otto, 2013).

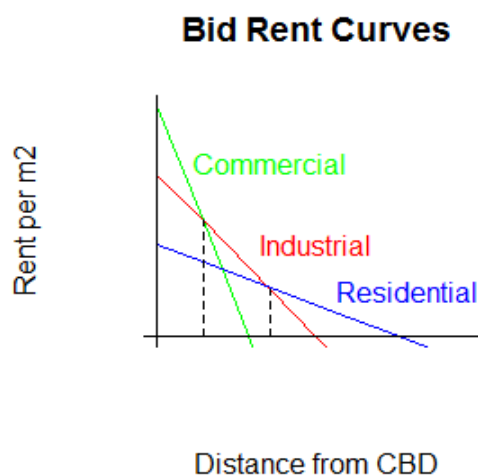


Fig. 2 Bid Rent Curve

Source: <http://stackoverflow.com/bid-rent-curves>



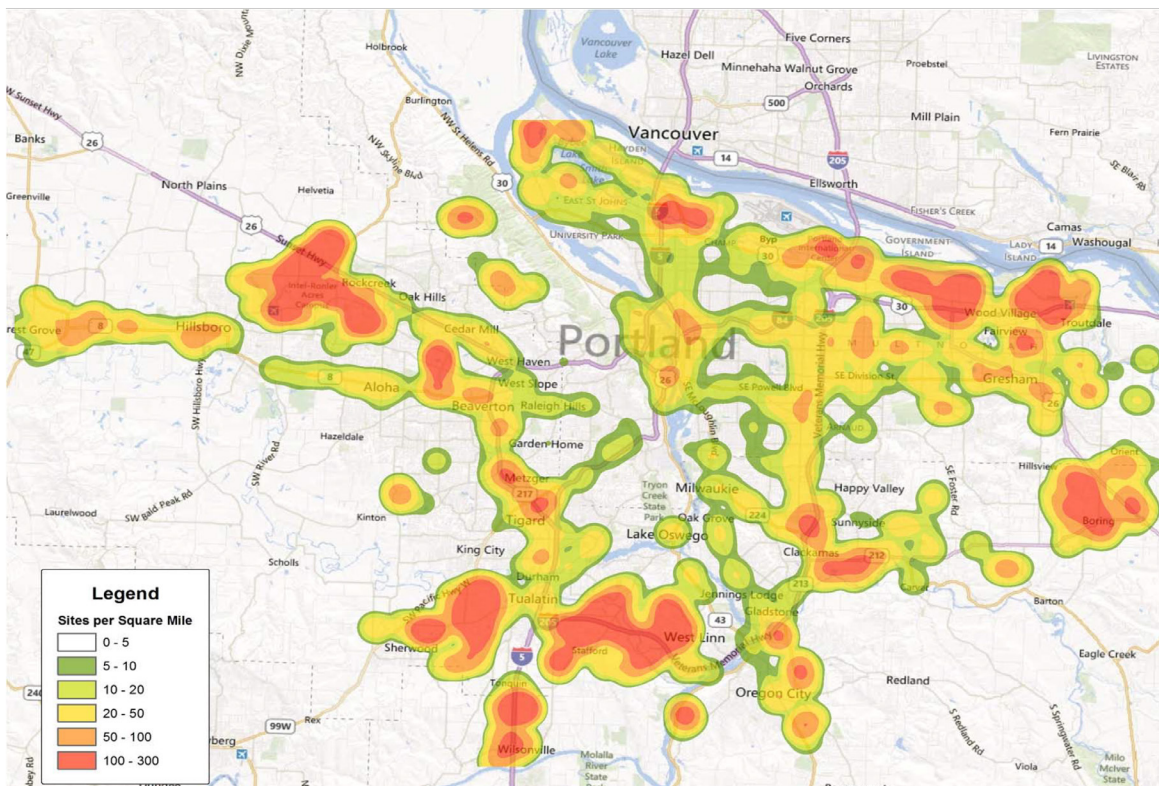
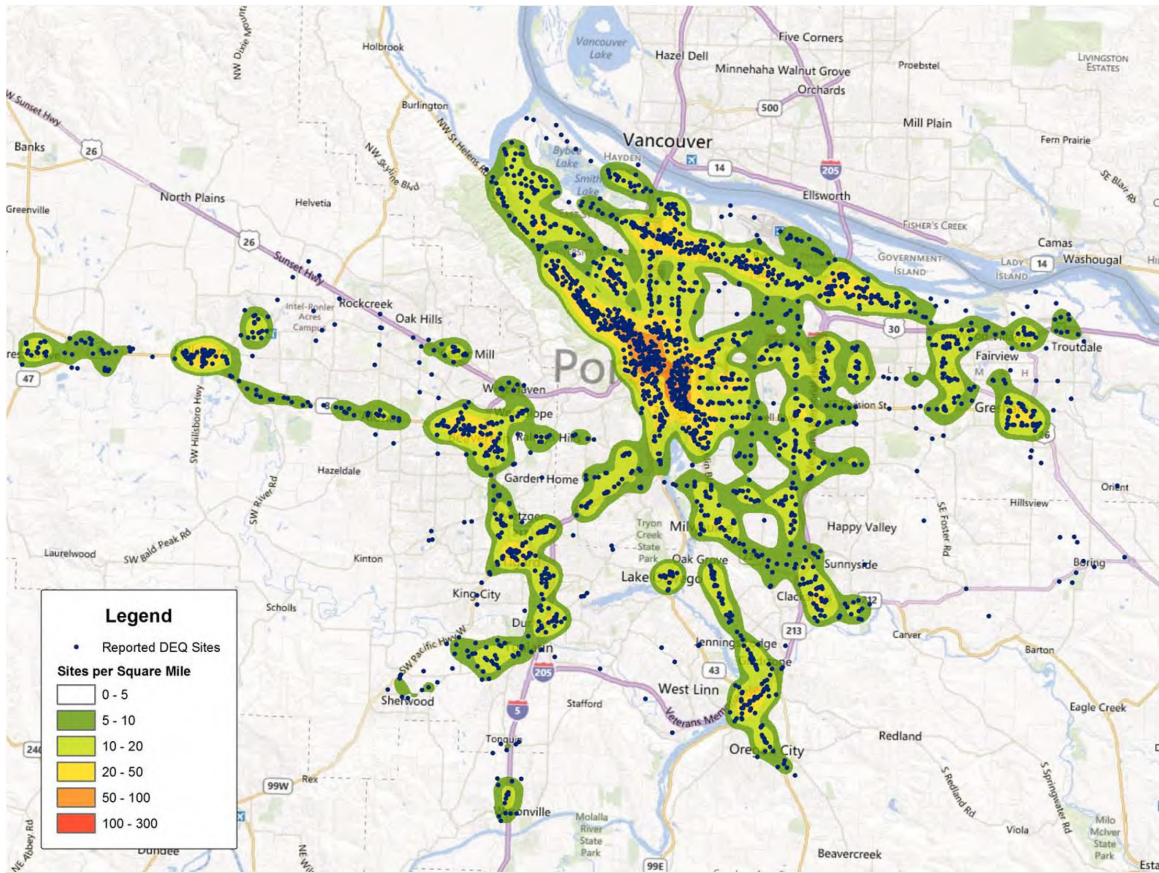


Fig. 3 Locations of Brownfields in and around Portland Metro area  
Source: Paul, Evan, Otto, 2013.

In addition, national-scale market forces like the recent recession can push industrial sites onto the periphery, or even force businesses into foreclosure altogether.

A second theory suggested to operate in tandem with Alonso's theory is the concept of globalization of production: Industries want to locate themselves where they can globalize their production. This is often near areas where there are more skilled workers, and in more propitious location for mass transportation of goods, such as near airports, to reduce transportation costs. This ideal location for globalization of production has been found to be closer to the periphery of a city than in its core (DeSousa, 2005).

A third theory is that brownfields simply develop out of the normal cyclical nature of business turnover. This is especially true for smaller cities, where the natural flux of businesses over time can result in abandoned and contaminated properties. To further add complication to the loss of business, many brownfields also are created by the presence of underground storage tanks, which can lead to vacancy without an immediate visible cue of contamination. Conclusively, while several theories and drivers exist to explain the causes of abandoned space and brownfield properties, reclaiming these sites for productive uses is often in a jurisdiction's best interest (DeSousa, 2005).

However, the reclaiming these spaces and understanding their formation was not always a topic of great importance. During the Industrial period, land use and its relationship to public health and community engagement were not well understood, or even considered. Today, the purposeful focus on abandoned space and reclaiming this land can be tied to several key benefits:

1. Increase revenue for the jurisdiction: Often jurisdictions are unable to collect property taxes from abandoned lands, leading to a financial loss for the city. When these spaces are redeveloped, property tax can be collected to increase city revenue.
2. Reduce crime and catalyzes further development: In some cases, abandonment or vacancy has been linked to increased crime rates, and a stagnation of development. Developers are less likely to pick low-traffic sites with little business nearby if sites in bustling neighborhoods are available. This results in a positive feedback loop of a continuing loss of development, which can eventually lead to an emigrating population and tax base that sinks the neighborhood into further disrepair.
3. Provide new amenities: When new uses are built on abandoned lots, this provides new jobs, shopping, and even housing opportunities in potentially underserved areas.
4. Reduce the cost of infrastructure: Building on abandoned lots can reduce infrastructure costs, as some of these lots can already be connected to amenities like utilities and water.
5. Protect farm and forest land: Promoting abandoned land development also focuses development on areas already zoned for commercial use, which prevents the spread of development into natural resource land like farm and forest land.

6. Create more walkable environments: Development on abandoned lots can increase land use interdependence. When cities are developed in a mixed-use fashion, this creates more walkable neighborhoods where people can reach a wide range of goods and services in a small radius. This encourages walking and biking as opposed to driving, reduces vehicle miles traveled and carbon emissions, and creates more vibrant and economically profitable communities. Redeveloping abandoned land also makes it possible to revitalize communities with more green space, and provide social cohesion as lots are redeveloped to create a less fragmented landscape (Office of Sustainable Communities, 2014).

In order to reach these benefits, most abandoned brownfield sites need to be remediated to be put back into productive use, which can be an enormously time-consuming and costly process. The general steps for remediating a brownfield, according to the DEQ include:

1. Conduct a site assessment (Phase 1, Phase 2 Environmental Site Assessment (ESA))
2. Conduct remedial investigation
3. Engage in cleanup planning
4. Perform remedial or corrective action
5. Issue a no further action determination

There is no specific timeline for these steps, as a remediation project can take several months or many years. Additionally, price tags for each step vary based on the extent of damage on the site. As highly complex and dynamic systems, each brownfield is considered to be its own individual problem; there is no one-size-fits all economic, social, or environmental approach that can tackle every intricacy. Yet, the promise of economic and social good their redevelopment may provide fuels the interest in their remediation, and removing the legal barriers to do so.

## Legal Framework of Brownfields

From a legal perspective, policies targeting brownfields and contamination first began in 1976 with the passage of both the Resource Conservation and Recovery Act (RCRA) and the Toxic Substances Control Act (TSCA). These acts were followed by CERCLA, the Comprehensive Environmental Response and Liabilities Act in 1980. CERCLA was the beginning of addressing remediation in toxic sites, and is most notable for the founding of Superfund sites (DeSousa, 2004). The Brownfields Action Agenda (BAA) and Voluntary Clean-Up Programs (VCPs) followed several years after, and one of the most recent acts was the 2002 Small Business Liability Relief and Brownfield Revitalization Act, which expanded the EPA brownfield program by increasing funding authority up to \$200 million a year, and included a new provision for direct cleanup grants valued at \$200,000 per site (EPA, 2014). A breakdown of these acts is outlined in Table 1.



Table 1. Legal History of Brownfield Legislation

Source: EPA, 2011; Kelsey Zlevor, 2015.

1976	RCRA	Governs disposal of solid waste and hazardous waste
1976	TSCA	Assess and regulate new chemicals entering the market
1980	CERCLA	Clean up sites with hazardous contamination
1995	BAA	Improve conditions for private redevelopment by reducing regulatory overlap among the levels of government, providing funds for pilot programs and tax breaks
1997	VCP	MOA's to foster collaboration between EPA and States in order to provide personnel/guidance for cleanup efforts
2002	SBLRBRA	Amended CERCLA to provide funds to enhance state cleanup programs and assess brownfields

Ultimately, all of these acts strive to streamline and facilitate the brownfield remediation process, but these acts and programs operate at a federal level as opposed to a municipal level. For example, while CERCLA is a helpful provision for brownfield sites classified as Superfund sites, CERCLA does little to provide for small brownfield sites that may not be classified as Superfund, but whose cleanup is nonetheless valuable and necessary (EPA, 2011). To rectify this, the EPA offers several grants, such as an assessment grant, area-wide planning grant, and cleanup grant. In addition, EPA Region 10, of which Oregon is apart, offers free technical assistance for targeted brownfield assessment.

Despite these opportunities, it is difficult for all jurisdictions to expect to receive financial and staff provisions from the EPA. For example, the EPA Brownfields Assessment Grant only enables applicants to receive up to \$200,000 per project. Additionally, an applicant can only receive up to \$200,000 per site for the Brownfield Cleanup Grant, and no entity can apply for funding cleanup activities at more than three sites. The Cleanup grant requires a 20% local cost share (EPA, 2014). All financial resources supplied by the EPA require a competitive grant application, for which sometimes a professional grant writer is suggested. In small jurisdictions seeking remediation funds, a professional grant writer is more a luxury than an inevitable addition to the process. Even in the case of VCPs, the MOA (memorandum of agreement) is a nonbinding agreement that is meant to foster coordination between the EPA and the state, and clarify the “general roles,” both of which carry little teeth (EPA, 2014). This is not to say that federal funding is not attainable, or is not a viable contribution to remediation projects. Instead, most current brownfield projects focus on utilizing federal money as a portion of the funds, otherwise forging partnerships between the local public and private sectors to secure funds to accomplish remediation projects.

Aside from funding, liability is also a concern. One of the most difficult parts of a brownfield is the ambiguity of assigning accountability. Even when the polluter of the property is known,

sanitation may still be voluntary given legal conditions, or if no responsible party can be identified, remediation falls in the hands of the government, or through public means (Golden, 2012).

For example, local governments must be wary of CERCLA, especially when considering land banking contaminated properties because local governments can be susceptible to CERCLA liability. Since CERCLA holds potentially responsible parties (PRPs) jointly responsible, local governments can be considered a PRP if the local government is the current owner of the contaminated property; owned the property at the time of the disposal of the hazardous substance; or arranged for disposal of hazardous substances on the property. If a local government acquires a contaminated property, CERCLA provides liability exemptions if the government acquired the property involuntarily, or if the government qualifies as a bona fide prospective purchaser (BFPP). A local government who knowingly purchases a contaminated property and is considered the current owner will not be liable under CERCLA if it achieves and maintains BFPP status. BFPP status may be achieved even when the buyer has knowledge of the contamination on the property at the time of purchase. The criteria to achieve BFPP is providing proof that: All Appropriate Inquiries (AAI) were performed prior to purchase of the property; all disposal of hazardous substances occurred before the party acquired the property; and the party has “no affiliation” with a liable or potentially liable party. To remain protected from liability for the contamination while it owns the property, a local government must maintain its BFPP status for as long as the potential for liability exists (DeRobertis, 2011).

While there can be successful funding and partnership opportunities, as well as clear means of establishing liable parties, all of these factors can be exceptionally uncertain, which can derail a project. These uncertainties have fostered a wave of tool development that seek to provide more local control of brownfield development, such as through a land bank.

## **Land Banking for Brownfields**

Land banking entered the legal scene around the time of the contamination legislation, with its earliest traces linked back to the 1960's. Land banking is defined as the practice of aggregating parcels of land for future sale or development, and is often used for tax delinquent properties like businesses and residential properties that have fallen victim to foreclosure (Kildee, 2010). While originally developed as a tool for creating land reserves, the nature and function of land banks have developed more as response to abandonment than as a proactive reserve of land: While some land banks have used their powers to hold land for future redevelopment, the dominant focus of land banking has been on properties with delinquent property taxes due to the dramatic increase in abandoned properties as a result of the Great Recession (Alexander, 2015).

The history of land banks can be broken into three generations. The first generation created land banks to deal with properties “stuck” in complex property tax enforcement systems. These land banks emerged as local government entities in the last quarter of the twentieth century in St. Louis, Cleveland, Louisville, and Atlanta.

Michigan and Ohio then comprised the second generation of land banks in 2002-2009. This generation focused on legislative amendments that broadened land bank powers and created explicit ties to property tax enforcement systems. The third generation enhanced programs to respond to the consequences of the Recession (Alexander, 2008). Now, Oregon's pursuit of land banking for brownfields is forging the fourth generation of land banks, and the state has the chance to write this new piece of land banking history.

Land banking for brownfields is different than a traditional land bank, in that regular land banks do not deal with contaminated property. While the enabling powers to establish a LBA are provided at a state level, it is still up to each city or jurisdiction whether or not they want to establish an LBA. Currently, only 11 states have LBA-enabling legislation (Schilling, 2013). As noted, one of the largest barriers to taking on brownfields is the lack of funding and fear of responsibility of incurring a costly property (Smart Growth America, 2008), which are two issues the new legislation seeks to tackle. With the passing of Oregon House Bill 2734, should a jurisdiction choose to implement an LBA, the "authority shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties" (S. 2734 4.1, 2015). In Oregon law, "jurisdiction" is classified as a city, or a special district. While simple in scope, such legislation is unprecedented, with no case studies of other land banks for brownfields in existence. Although Oregon cities now have the legal backing to establish a LBA, it is difficult to expect many cities to immediately take this step towards addressing brownfields with new uncharted tools given the lack of literature available on land banking brownfields.

Given all that is known about brownfields, the question now facing many cities is how do we use the tools at our disposal constructively to tackle blighted properties given the ambiguity in assigning responsibility, the uncertainty of funding, and interest in investigating all three E's effectively? Since there are myriad benefits to redeveloping abandoned pace and continuously improving legal provisions for brownfield redevelopment, the crucial step is understanding what these provisions enable jurisdictions to do. Next, key policy frameworks in Oregon will be explored to better couch the abilities of HB 2734.



## Policy Context in Oregon

The state of Oregon has a fairly robust brownfield support network in terms of funding and provisions, which has developed out of many years of legislation and statewide organizing. To better illustrate the milestones that have shaped brownfield work in Oregon, key events and passage of legislation are illustrated in the timeline below:



Fig. 4 Brownfield Timeline

Source: "Brownfields Program," 2015; Kelsey Zlevor, 2016.

The Brownfields Coalition formed in 2014, and it the most pivotal body involved in brownfield redevelopment in the state. The Brownfields Coalition focuses on state brownfield policy creation and implementation that reduces barriers to redevelopment and increases economic opportunity on these sites. To do this, the Coalition is broken into two subcommittees: The financial incentives committee and the regulatory enhancements committee. The Coalition was forged with strong leadership from Business Oregon, along with representation from groups such as the Association of Oregon Counties; League of Oregon Cities; Cities of Beaverton, Bend, Eugene, Lincoln City, Portland, Salem, Springfield, and Tigard; Metro; Oregon Department of Environmental Quality; U.S. EPA; Oregon Economic Development Association; Oregon State Chamber of Commerce; and Portland State University (“Brownfields Program,” 2015). HB 2734 was first conceived and presented in the Metro Brownfields Regional Scoping Project in 2012, and was proposed by the Oregon Brownfield Coalition.

The development of the Brownfields Coalition is fairly recent in the state, and the 2015 legislative session was its most active in terms of proposing legislation. HB 2734 was the first of a three-part package that the Coalition proposed. Part two of the legislation (now listed as HB 4084) also passed and becomes effective June 2nd, 2016. HB 4084 enables brownfield tax abatements, which are partial property tax exclusions for specified improvements to brownfield sites. They can help mitigate the risks and costs of brownfield cleanup, and can 1) target specific reinvestment areas, 2) have a set of conditions attached for participation, 3) be enacted at the discretion of the local jurisdiction, and 4) offer a benefit to non-profit development organizations. The abatement program focuses on work done to assess a property’s current contamination; no abatement is provided for any subsequent redevelopment on the property. Part three of the legislation which has not yet passed proposed a brownfield tax credit, which would allow property owners and developers to reduce income taxes by a percentage of the documented costs of brownfield cleanup. The tax credit could apply to prospective purchasers or non-responsible owners, require property owners to be enrolled in a DEQ cleanup program, and require a contribution of cleanup costs from the owner (Portland Business Journal, 2016).

The passage of these tools is ultimately in the state’s interest not only to reduce the number of abandoned or blighted properties in communities, but it is also a profitable business. In 2014, Business Oregon reported that \$1 of state investment in 51 projects leveraged \$116 of other funds, and resulted in \$2.3 billion of economic activity, the creation of 8,900 jobs, and generated \$19 million in tax revenue. Keeping this calculation in mind, Oregon has a whole host of untapped potential when it comes to brownfield development: the state is home to over 13,500 brownfields, only 35% of which to date have been cleaned up. Fifty-four percent of the 13,500 brownfields are located in economically distressed communities, which poses an immense opportunity in future years to reclaim these sites as stimuli for future economic development (“Brownfields Program,” 2015).

With knowledge of all that lead to the current climate of brownfield work in Oregon, it is important to note the diverse number of actors that utilize myriad tools to facilitate redevelopment. To better discern between these actors and programs, a more detailed explanation of each is as follows:



Table 2. Key Actors in Oregon  
Source: Business Oregon, 2015; EPA, 2011; Kelsey Zlevor, 2016

	Group Name	Mission	Administers:
Local	<i>Urban Renewal Agency</i>	Local agency that uses tax increment financing (TIF) funding to accomplish pre-defined urban renewal projects in a specific district.	<ul style="list-style-type: none"> <li>• TIF funds</li> <li>• Agency budget</li> <li>• Any grants applied received relevant to a project</li> </ul>
	<i>Brownfields Coalition</i>	Convened by Portland Metro, a diverse group of public, private, and non-profit partners in Oregon working to find strategies that address financial risk, liability, and community interests.	<ul style="list-style-type: none"> <li>• No formal funding, but drafts new legislation for review</li> </ul>
State	<i>Business Oregon</i>	State economic development agency that works to create, retain, and expand businesses that provide jobs for Oregonians through public-private partnerships and support of economic opportunities for Oregon companies and entrepreneurs.	<ul style="list-style-type: none"> <li>• <u>Brownfields Redevelopment Fund</u>- provided \$11.7 million in 2014, funded by proceeds from the sale of state revenue bonds</li> <li>• <u>Brownfields Cleanup Fund</u>- provided \$4.58 million in 2014, capitalized through a revolving loan grant from the U.S. Environmental Protection Agency</li> </ul>
	<i>Infrastructure Finance Authority</i>	IFA provides grants, loans, and technical assistance for cleaner drinking water; compliant wastewater systems; better roads, main streets and utilities; and improved social facilities statewide	<ul style="list-style-type: none"> <li>• <u>Community Development Block Grants</u>: \$2,000,000 cap for any individual project in the Community/Public Facilities category</li> </ul>
	<i>Department of Environmental Quality</i>	The DEQ works with communities, organizations, and other government agencies to facilitate redevelopment, such as working with Business Oregon to find funding for brownfield investigations and cleanups. The DEQ can help remove barriers to redevelopment by assisting in investigating and clean up of sites. The DEQ is funded by grants through the EPA, and is supported by programs with facility fees, agreements, funds, and other grants.	<ul style="list-style-type: none"> <li>• <u>Orphan Fund</u>- use of state funds where perpetrator is absent or unwilling to facilitate cleanup. The orphan fund is funded through the sale of long-term bonds (20 grants issued to date)</li> <li>• <u>Site Specific Assessment Program</u>- the DEQ uses federal EPA funds awarded to the state to evaluate environmental contamination on potential brownfield sites (85 assessments to date)</li> <li>• <u>Prospective Purchaser Agreement Program (PPA)</u>- an agreement between the DEQ and prospective purchaser of the property. This agreement limits the liability to the DEQ for environmental cleanup in exchange for substantial public benefit (ORS 465.327) (120 conducted to date)</li> </ul>
	<i>Oregon Health Authority Brownfield Initiative</i>	Builds Oregon's capacity to include health considerations in brownfield planning through the Brownfields and Public Health Toolkit, contributing to risk assessments by providing health education as part of environmental assessment activities at specific sites, and addressing health risks and health-related community concerns through the assessment and redevelopment process.	<ul style="list-style-type: none"> <li>• Assistance and guidance for individual projects based on funding received by the Agency for Toxic Substances and Disease Registry, completed two projects in 2014</li> </ul>
Federal	<i>Environmental Protection Agency</i>	EPA's Brownfields program provides grants and technical assistance to communities, states, and tribes to assess, clean up, and reuse brownfields.	<ul style="list-style-type: none"> <li>• <u>Assessment Grant</u>- provides funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites</li> <li>• <u>Revolving Loan Fund Grant</u>- enables states, political subdivisions, and tribes to make low interest loans to carryout cleanup activities at brownfields properties</li> <li>• <u>Clean-up Grant</u>- provides funding for cleanup</li> <li>• <u>Area-Wide Planning Grant</u>- enables communities to research, plan, and develop implementation strategies for an area affected by one or more brownfields; an area-wide plan informs the assessment, cleanup, and reuse of the property</li> <li>• <u>Technical Assistance to Brownfields (TAB) Grant</u>- funds technical assistance to communities on brownfield issues with the goal of increasing the community's understanding and involvement in brownfield cleanup and revitalization. These services are often offered for free by region <ul style="list-style-type: none"> <li>◦ Center for Creative Land Use Recycling is the technical assistance provider for Oregon</li> </ul> </li> <li>• <u>Multi-Purpose Pilot Grant</u>- EPA is piloting a new grant program that will provide a single grant to an eligible entity for both assessment and cleanup work at a specific brownfield site owned by the applicant</li> </ul>

Of these groups, the most commonly confused with the role of a land bank is the urban renewal agency. With the passage of HB 2734, little information exists to highlight how a land bank could assist in brownfield redevelopment compared to a local urban renewal agency, and this topic is explored next.

## Urban Renewal Agencies

Due to the lack of research available to explain the relationship an urban renewal agency (URA) may have to brownfield redevelopment, much confusion exists as to how a LBA's powers to redevelop brownfields differs from that of an URA. This section provides an overview of URAs in terms of universal governing principles, followed by an analysis of Oregon URAs' involvement in brownfield remediation using resources provided by the Association of Oregon Redevelopment Agencies (AORA) (Figure 5).

Through this analysis, it is possible to compile a concise understanding of URAs, and how they may help or hinder Oregon's brownfield remediation.



*Fig. 5 AORA*  
*Source: AORA, 2014.*

### Context

To begin, the connotation of urban renewal in Oregon is far different than its connotation around the country. Urban renewal can be a topic of great contention for its use of tools such as eminent domain and demolition of property to attempt to reinvigorate a blighted area through tax-increment financing (TIF). However, URAs, are unique in Oregon, and over 47 agencies exist in the state as of 2003 (Urban Renewal in Oregon, 2012). These agencies also operate using TIF funds, but are generally viewed as helpful to communities as opposed to menacing.

There are several universal economic principles related to URAs that govern how they function. The most notable aspect of URAs is their ability to disseminate TIF funds through a TIF district. A tax increment is the difference between the amount of property tax revenue generated before a TIF district designation and the amount of property tax revenue generated after TIF designation. The theory behind TIF is that by implementing a district and making development improvements in that district, additional tax revenue will be generated over time and will go back to the district to fuel additional development. The TIF district boundary is defined in the agency's Urban Renewal Plan, which is required by state statute. TIF as an economic tool is often used to invest in infrastructure, attract businesses, and rebuild blighted areas, and only property taxes generated by the increase in value of the TIF district are used for these projects. TIF is a popular tool because it 1) provides development incentives without tax increases, 2) increases property values, 3) creates a broader tax base, and 4) is locally controlled. TIF increases property values because redevelopment projects are an investment that cause property values to increase, and infrastructure redevelopment attracts private developers to invest in the community, which broadens the tax base (Village of Schaumburg, 2016).

URAs also assemble and market land which can pose barriers, such as financing land write-down. This is a method of encouraging new development by offering land at a value that is lower than its market value. This lower cost entices developers and funnels development into targeted areas. However, it also means the redevelopment agency assumes part of the acquisition, demolition, or improvement cost that was reduced from the selling price. Land write-down is the difference between market value and fair reuse value. Fair reuse value is based on the highest

use of a property taking into account development restrictions that may come with the property or limitations that may be imposed by the urban renewal plan that affect the property's value. A problem then for URAs is whether or not the agency can eat the cost that enables a subtraction from the selling price (Farris, 2001).

Often urban renewal agencies offer land for sale using processes such as a request for proposals. Interested purchasers propose development plans for the property, which are evaluated by the URA according to the criteria put forth in its Urban Renewal Plan. An URA should obtain an appraisal of property before undertaking negotiations for property acquisition, and this is where a brownfield may be detected. From here, it is possible to synthesize how URA plans and goals develop into a concise snapshot of how URAs interact with brownfields.

### Development of URAs

AORA is the primary advocate for Urban Renewal Agencies in Oregon. Functioning as a network, this group provides information to a wide host of audiences and this content was explored for further analysis. To understand URAs in Oregon, a key factor is that every URA was developed through a long and thoughtful process. Urban renewal boundaries must be established by the jurisdiction, and only once the boundary has been set can an URA be formed. URAs are separate and unique entities that may be activated by cities or counties under the authority of Oregon Revised Statutes (ORS 457.035). An URA is first established by evaluating whether the area is ripe for becoming a TIF district through a financial feasibility study. The area is also measured for the degree of blight, and it is determined whether the blight is significant enough to qualify for an agency. ORS 457.010(1) broadly defines "blighted area" to include unproductive land, potentially including vacant, and unimproved land (58 Or LUBA 148 2009). The URA must meet at least one condition of blight identified in the statute to be eligible (AORA, 2014).

Once an URA has been established, a board is created (often of city council members), and the URA can develop an urban renewal plan for public input. This plan is a suite of goals and projects the URA hopes to accomplish. The typical components of an urban renewal plan are:

- A description of each proposed urban renewal project
- A map and legal description of the URA
- An explanation of how the plan relates to local objectives
- A map of proposed land uses, maximum densities, and building requirements
- A description of relocation methods for residents or businesses that must move because of urban renewal agency projects
- A description of property to be acquired and how it will be disposed of (sale, etc.)
- If the plan calls for the use of TIF, the max amount of indebtedness to be incurred
- Duration provisions of urban renewal plans are not required by statute. Localities may impose durations, and they become another provision of the plan (AORA, 2014)

A review of the urban renewal plan must also be conducted to ensure that the plan will conform to the comprehensive plan and other local objectives. This urban renewal plan must be accepted by the governing municipality before the URA is given full functioning rights (AORA, 2014).

## URA Systems and their Relationships to Brownfields in Oregon

According to AORA, the most common issues faced by URAs within the formation process are:

- More project expenditures than projected TIF revenue; lack of funding
- Comprehensive plan needs to be updated to conform with desires jurisdiction
- Compression impacts financial feasibility
- Lack of support for the proposed redevelopment
- Need to go to a public vote
- Changing governing body before feasibility study adoption

From the aforementioned broader URA context research which also mentions funding, it is clear this is not just Oregon URA issues, but national issues as well.

Since URAs rely heavily on TIF districts (Figure 6), managing the start-up cost of the URA is crucial. Since TIF relies on future property tax revenue to pay back initial start-up loans, TIF districts require money upfront for their creation. In Oregon, statutory provisions govern the types of projects that may be funded with tax TIF funds. According to ORS 457.170, projects include:

- Acquisition of property
- Clearance or rehabilitation of property that is acquired by the URA
- Construction or improvement of streets, utilities, and site improvements
- Plans for voluntary repair and rehabilitation of buildings or other improvements
- Relocation of persons and property displaced by urban renewal projects
- Sale or lease of property
- Neighborhood development programs

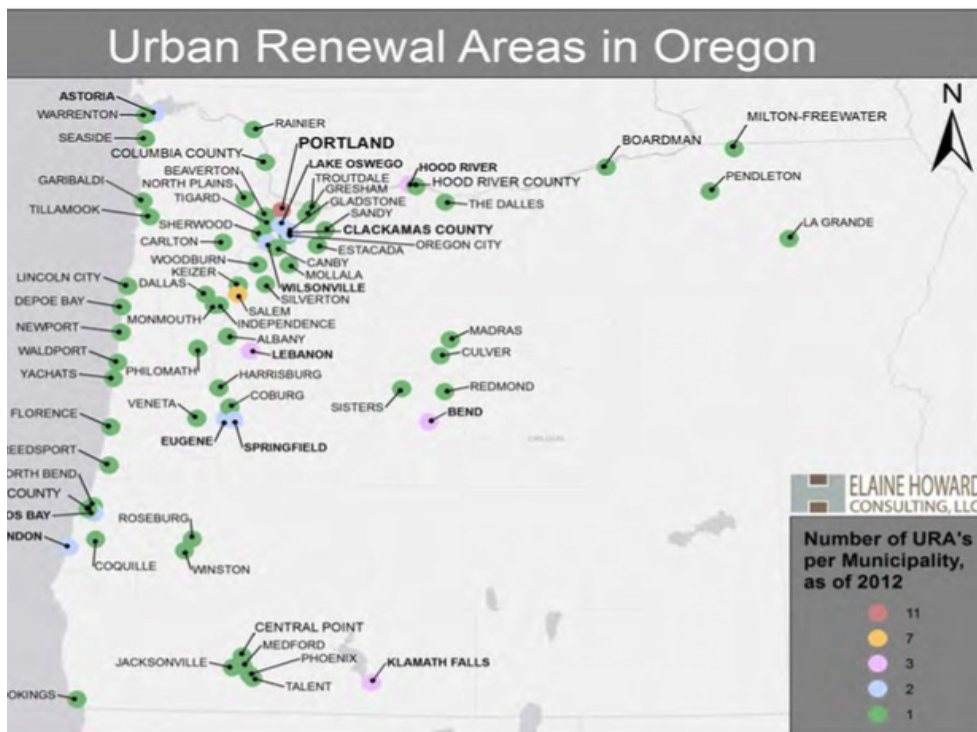


Fig. 6 URAs with TIF  
Source: AORA, 2014.

Includes only those collecting tax increment

Keying into the “rehabilitation of property,” AORA puts forth scant commentary on what to do when an URA actually encounters a brownfield:

*“Sometimes the costs of environmental remediation needed to implement a project are higher than anticipated during the planning process (or such remediation was not even anticipated). Better project analysis in the planning stage can help avoid these situations, but particularly as it pertains to environmentally contaminated sites, such surprises cannot always be avoided. If this occurs, options include re-scoping the project to reduce overall costs or pursuing brownfield remediation grants and sources of project funding” (103).*

It is clear that brownfield redevelopment by URAs may be tackled similarly to any other entity– hope for the best, but prepare for the worst. Remediation is as much a gamble for URAs as it is for a jurisdiction, and it does not appear that URAs have any additional special tools to (AORA, 2014).

To explore URAs’ provisions for brownfields more explicitly, urban renewal agency plans available on the AORA site were reviewed more broadly for Clackamas County Industrial, Clackamas County Government Camp, North Clackamas Revitalization Area, Clackamas Town Center, and City of Salem – Pringle Creek for language regarding general remediation protocol that may be more locally specific. Of all of these, brownfields were not referenced other than the following from the North Clackamas Revitalization Area:

*The Renewal Agency may participate in funding improvements needed for public safety purposes. Public safety improvements may include:*

- *Placement of fire hydrants in required locations*
- *Assist in establishing a community policing facility*
- *Assist in cost of cleanup of contaminated properties*
- *Provide incentives for sprinkler installation (11) (North Clackamas Revitalization Area Plan, 2008)*

From URA guides to jurisdiction-level plans, it seems URAs may not have any additional protocol for brownfield remediation as opposed to any other local agency in the state.

Another consideration is whether cities can expect a local URA to help a brownfield situation at all. Since it is up to each jurisdiction to establish an URA, there is no guarantee an URA is even available to redevelop property. There are about 100 URAs in Oregon, as seen in Appendix B. These URAs seem to line up with a map of brownfields in Oregon (Appendix B), aside from some parts of Northeastern Oregon. However, just because URAs exist in high density locations for brownfields does not mean URAs are working on these sites- it is inconclusive as to whether URAs are actually addressing the local brownfield problems in jurisdictions they represent. At this moment, the relationship between URAs and brownfields is still tenuous at best.



## URA Brownfield Clean-Up in Practice

To get a deeper sense of the relationship, the only successful remediation project cited on AORA's site, the Lincoln City Jennifer L. Sears Glass Art Studio, was explored. The Lincoln City URA purchased the property and supported the development of a privately-operated glass art studio in 2011. In a phone conversation on Monday, March 7, 2016 with Kurt Olsen, Director of the Lincoln City Urban Renewal Agency, and Alison Robertson, Assistant Director, it became clear that Lincoln City's brownfield situation was at the easier end of the remediation spectrum. The brownfield status was not identified until construction, when soil needed to be hauled for testing. However, the building was given the all-clear for construction, and Olsen noted their primary responsibility was soil water samples were monitored for several months. The URA utilized state grant funding for the site clean-up and monitoring, and the soil contamination was eventually cleared. In terms of unexpected remediation, the Glass Art Studio may not be representative of URA barriers towards a truly contaminated site (Lincoln City Urban Renewal Agency, 2015).

Olsen and Robertson acknowledged that in the case of known contamination, the URA could reject buying the property if it chooses. The rules for how each URA handles brownfield properties is not codified—each URA determines their involvement and this can be concerning given that a URA specializes in property acquisition and assembly. Ultimately an URA is self-funded to do preliminary work to determine contaminants if suspected, but most URAs could only do a full remediation with the help of grant funding, like Lincoln City.

From here, Robertson highlighted a key loophole in the URA-brownfield partnership that may be the most important of all: since an URA cannot work with private property, an URA cannot contribute state or grant funds to help remediate contaminated private property. Since private property owners do not have access to all of the state grant funding an URA can access, they are caught in a Catch-22 with URAs: a private individual who wants to sell property cannot sell without disclosing contamination levels, so many property owners do not test for contamination as they are legally obligated to disclose this information once known. Since the property owner is legally obligated to remediate, often they are trapped with the property if they don't have funds for remediation. Meanwhile, a public entity like an URA can receive state funds to remediate land, but there is no conduit to provide these funds to a private individual if the URA does not own the property. This bureaucratic red tape may indicate the potential benefits of adding an LBA to the municipal arsenal.

## Summary of Findings

After reviewing the URA landscape in Oregon and how it pertains to brownfield redevelopment, several key points become clear. First, while URAs can redevelop blighted properties, URAs reserve the right to bypass brownfields if they do not have the funds or public support to remediate the site. In this case, LBAs could be a promising solution because of their ability to direct full attention and funds to brownfield sites, where the remediated outcome may not be as dependent on wavering factors that URAs work so hard to secure.

Additionally, although URAs have the ability to enter into ownership of brownfield lots, URAs do not have any more formal process for dealing with these sites than local governments. In fact, URAs in Oregon may have less clear protocols than a municipal government based on the analysis of AORA's documentation and individual URA renewal plans. While URA locations are correlated with concentration of brownfield sites, it is not likely that URAs are targeting and solving the localized brownfield problem. Finally, it is important to consider that the ability of a URA to assist in the redevelopment of private property is slim to none, despite a URA's ability to secure remediation funding from state sources.

Due to inconclusive evidence that URAs have formalized processes and abilities to handle brownfield sites, a wider possibility is emerging that LBAs may have a place in Oregon to tackle brownfield sites. While more research is needed to determine how LBAs can address prominent problems, such as remediating private land, by clarifying the roles of brownfield actors, the state can be one step closer to achieving sustainable infill development in Oregon communities. A summary of actors and their roles is illustrated in Table 3.

*Table 3. URA and Land Bank Oregon Policy Summary Table*  
Source: AORA, 2014; Kelsey Zlevor, 2016.

	<b>Land Bank</b>	<b>Urban Renewal Agency</b>
<b>Size</b>	City-wide, County-wide	Determined by Urban Renewal or TIF district
<b>Oversight</b>	City Council, Board of Directors	City Council, Board of Directors
<b>Mission</b>	Acquire, rehabilitate, redevelop, reutilize, and/or restore brownfield properties within jurisdiction to place the properties back into real estate market for productive use.	Acquire, assemble, hold, and sell land in specific district through TIF to accomplish urban renewal projects that improve the district.
<b>Funding Mechanisms</b>	City budget start-up funds, grants	TIF, city budget start-up funds, grants
<b>Enabling Legislation</b>	Oregon House Bill 2734 Amends: ORS 244.050, 465.255, 466.640, 468B.310	ORS 457.035

While land banks and URAs are both public entities that acquire and assemble land for redevelopment, land banks for brownfields are brand new entities with a very different scope than regular land banks, and certainly than URAs. The following section seeks to provide a deeper explanation of the current enabling statute, and couch Oregon's provisions in an outline of basic examples of other land banks nationally for scale. Comparatively, Oregon's statute truly is the first of its kind and is the source of many further questions.

## Overview of Statute

All key tenets of the Oregon land bank system are codified in HB 2734. However, some of the provisions can be difficult to understand. After analyzing testimony in favor of the passage of HB 2734, and attending “Is Land Banking For You?” at the Oregon Brownfields Conference, key aspects of the legislation were gleaned for jurisdiction consumption.

As an overview, land banking is the aggregating of land parcels for future sale or development. While the enabling powers to establish a LBA are provided at a state level, it is still up to each city whether or not they want to establish an LBA. With the passing of Oregon House Bill 2734, an LBA “shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, re-utilizing or restoring brownfield properties,” and the legislation exempts the land bank itself from liability for pre-existing contamination.

Currently the federal and state governments have been attempting to address the liability concerns through programs and policies such as the Prospective Purchase Agreements, Voluntary Cleanup Programs, and the issuance of “No-Action Letters.” These programs enable parties to define the extent of remediation costs early on, and can provide liability relief. However, the inspiration for the land banking legislation was derived from the Oregon Brownfields Coalition, who was seeking to create a tool that enabled more local control, or the ability for local governments to better tackle brownfield issues without needing to rely as heavily on the state and the aforementioned programs (Portland Business Journal, 2016). HB 2734 does indeed foster more local control, and provides several additional benefits and stipulations, as outlined below.

### **Key Idea #1: The land bank is not liable for pre-existing contamination.**

Often the most confusing part of the legislation is “how is this possible?” The land bank is not liable for pre-existing contamination because it is not classified under “owner” status in HB 2734. How status is classified in a statute can subject an entity to liability, meaning that a LBA is exempt from liability because it is classified as a property “holder,” and the past property owner may still be liable. Under HB 2734, land banks will not be liable to the State of Oregon for hazardous substances present on the parcel at the time of acquisition.

The LBA may acquire properties and hold them until the right development alternative arises. The land bank may also conduct removal/remedial actions under agreement with the DEQ through a PPA, and the LBA can assist parties interested in acquiring or leasing land bank properties in entering into agreements with the DEQ. Land banks can also apply for grants, issue bonds, take on debt, and buy/sell properties as a means of financing their long-term operation. The financial liability of any debt taken on or bonds issued by a LBA will be limited to the LBA, and will not expose the general fund of the local government to liability. In short, LBAs can acquire property and manage it to maximize its value as would a private owner. These provisions provide initial liability protection to the LBA, and may assist in making brownfield properties more attractive for developers by having the LBA serve as the intermediary step of opening the Pandora’s box of a contaminated site to understand what remedial work is needed (Land Bank Legislation Support Testimony, 2015). If the land bank



cleans up the contamination, the LBA may seek to recover remedial costs from the liable party under ORS 465.255(1).

While it would require initial financial support to acquire and manage a portfolio of properties, the LBA could achieve financial self-sufficiency through the redevelopment process after several years. The land bank could attract funding sources for addressing brownfields without placing additional legal risk or burden on the general fund, and could reposition land for the private market to invest in. While HB 2734 may not apply to all brownfields, it may provide starter tools to assist overlooked properties (Land Bank Legislation Support Testimony, 2015).

**Key Idea #2: LBAs can acquire land through a variety of means, and can bring action to recover remedial action costs from the person liable.**

The statute permits a LBA to acquire land under any lawful means— this can be by gift, purchase, incurring debt to finance a purchase, or using a joint-venture with another entity. However, the land bank does not have the power of eminent domain. In the case of purchasing, land prices are market driven— the LBA would likely buy parcels for market value and then sell for market value. Since the LBA will have to report its transactions in an annual report to the Governor and Legislature, the sale of the parcel at fair market value will be critical.

If a land bank purchases from a liable property owner, the expectation is that the exchange would be a “clean-break” purchase where the land bank would not engage the property owner after the LBA receives the property. Since the prior owner receives no release from liability under the statute, they could still be sued by other parties and it is likely they would negotiate a release from the LBA as part of the purchase. Since the LBA is permitted to seek cleanup recovery costs, the LBA can seek to recover cleanup costs from the prior owner. The LBA can also seek to recover costs from prior operators at the site if they exist, or owners that pre-date the seller, provided contamination occurred during that prior ownership. Although cities can partake in contribution litigation to facilitate cleanup similar to the land bank, the process is often very long, expensive, and frustrating. Therefore, the benefit of the LBA is that it can initiate clean up activities, such as a preliminary site assessment, which can help cities and developers begin to understand the “unknown” or what the sit Key Idea #4 HB 2734 provides local control through local management.

**Key Idea #3: The LBA must report annually to the Governor and Legislative Assembly.**

A LBA must annually prepare and submit a report to the Governor and to the Legislative Assembly. The report must summarize the activity of the authority, including a list of real properties the authority has acquired or disposed of, the method of acquisition or disposition, the price paid or received for each property, and any additional information as requested.

**Key Idea #4: HB 2734 provides local control through local management.**

The choice to establish a LBA is up to the local government, and the choice of what properties a LBA acquires will be up to the local interests represented on the Board of Directors. The Board of Directors must be made up of members from school boards, city/county council, and

community organizations to ensure a broad spectrum of the jurisdiction is represented. A LBA would be classified as a public body, and its meetings and records would be open to the public. HB 2734 also gives land banks the ability to establish “priorities” of uses for the properties they acquire – these can include commercial, affordable housing, open space, etc., to ensure greater conformity with local development goals.

Additional stipulations:

- The numbers of directors must be an odd number not less than five or more than 11.
- Terms of service for directors may not exceed four years, and directors cannot serve more than three terms.
- The LBA is managed by a Board of Directors appointed by the local government. This Board must contain representation from: The local government, the largest municipal corporation that is not a school, the largest school district, and any civic organizations.
- The Board sets its own rules, Chair, Vice Chair, Treasurer, Secretary, and Officers. The LBA may hire employees as appropriate.

Overall, land banks provide valuable abilities on paper, but their true utility must be gauged through analysis of other land banks around the United States, as well as on the needs of local Oregon jurisdictions.

## National Examples of Land Banking for Scale

No two state or local land banks are identical, and no existing state statute or local land bank should be viewed as the only way to implement a land bank. Since land banks are public or community-owned entities created to acquire and repurpose abandoned properties, the success of each land bank lies in its targeted approach to tackle complex issues of abandonment while being flexible and able to adapt to local conditions (Alexander, 2005). All following examples and tactics are meant to inform how Oregon jurisdictions can implement a land banking system based on universal needs, but there are no formal rules or best-practices for Oregon’s type of land bank outside of HB 2734. Since land banking for brownfields is a new concept, there are currently no template land banks to inform Oregon’s model.

### General Land Bank: Genesee County

Genesee County Land Bank in Michigan has been hailed as the premiere land bank in the country, and has served as a foundation model for how we understand land banking today. The Genesee County Land Bank specializes in buying tax delinquent properties, typically abandoned houses, that are blight to the community. The Land Bank is classified as a public body, and was signed into approval by the Treasurer of the County (Woods, 2015). The Land Bank itself is run by a board of directors, and powers are provided by the Michigan Land Bank Fast Track Act (MCL 124.773). The Land Bank operates county-wide in conjunction with a Citizen Advisory Council, which helps oversee the sale and maintenance of properties. The

Land Bank also employs a Blight Crew, a group of local residents employed to restore homes, clear garbage, and maintain landscaping before sale (Figure 7). The Land Bank receives funding from county, state, and federal resources, as well as any successful grants. The Genesee County Land Bank acquires their properties in several ways: Properties not sold at the Treasurer's office, through purchase from public or private institutions, by receiving county-owned properties, or by receiving gifts of property.



Fig. 7 Genesee County Blight Crew  
Source: <http://www.thelandbank.org/media/pages/crew>

This land bank focuses solely on foreclosed property, yet does an excellent job engaging the public and providing jobs– the development of the Blight Crew provides local jobs to residents of all ages and helps foster civic pride and engagement in struggling communities. The Land Bank has also seen success in providing affordable housing to first-time home-buyers, and helping neighbors acquire vacant properties to create bigger yards and gardens. The Genesee Land Bank has no liability provisions for contaminated properties, however (Woods, 2015).

#### Regional Land Bank: Connecticut Brownfield Land Bank (CBLB)

The CBLB is a concept in development, which would function as a statewide nonprofit without any enabling legislation which seeks to obtain abandoned homes, as well as work on brownfield properties. The CBLB seeks to provide technical assistance for the assessment, remediation, and redevelopment of properties. The CBLB seeks to help aggregate parcels and forge redevelopment deals; any site held by the CBLB is subject to property tax (Woods, 2015).

#### County Brownfield Land Bank: Suffolk County Land Bank (SCLB)

SCLB focuses on brownfield properties, but employs specific tactics to circumvent liability concerns. The SCLBC was created to facilitate remediation and redevelop tax-delinquent brownfield sites. Suffolk County government oversees a work group that classifies contaminated properties and tries to prevent the County from foreclosing on them. While admirable in theory, this creates a backlog of properties trapped in bureaucratic limbo: The landowner fails to pay taxes yet the County will not foreclose because of potential liability. To rectify this issue, the SCLB has used funding from the EPA to conduct Environmental Site Assessments, which helps the County decide when to foreclose and when to develop alternative plans for redevelopment of the properties (Woods, 2015).

Creatively, the SCLBC also secures warrants granting site access for the Suffolk County Health Department to conduct testing without actually acquiring title to the property under New York Public Health Law. The County can then assign tax liens to the SCLBC despite having ownership of the properties. Transferring ownership of the liens to a new owner when the

land goes to auction allows the SCLBC to package redevelopment deals for private purchasers through its land banking powers without either the County or SCLBC ever taking ownership of the property (Woods, 2015).

### Lucas County Land Bank

The Lucas County Land Bank is governed by a Board of Directors, including: one County Treasurer, one representative of the largest municipality based on population, one representative of all townships with population over 10,000 in the unincorporated area, and up to four additional members. The Land Bank is managed by a President (Figure 8).

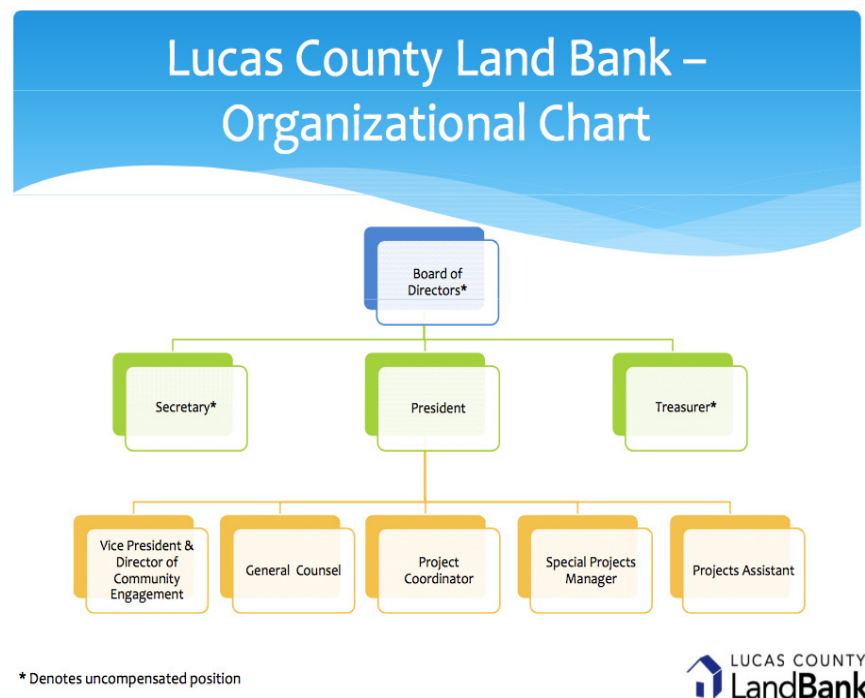


Fig. 8 Organizational Chart

Source: [wrlandconservancy.org/conferences2013](http://wrlandconservancy.org/conferences2013)

The President may hire additional employees as necessary. Lucas County Land Bank provides excellent documentation of modeling, especially for their organization structure and financial management. Expedited tax foreclosure is the Lucas County Land Bank's single largest property pipeline and can be a tedious process, as shown in Figure 9 (Mann, 2013) (Woods, 2015).

Lucas County Land Bank employs two useful tools as a part of their operations: The first is the Block Watch system, and the second is their comprehensive, web-based data management system which was made in-house. Using the Block Watch system, Lucas County partners and taps into neighborhood watch groups in the county and provides them data sheets to survey homes. Using the form, residents can write down a property and assess the home based on the amount of overgrown vegetation, number of broken windows, amount of trash, etc., and submit the data to the county. Engaging the community helps fuel civic responsibility among residents, and helps the Land Bank do its job more efficiently. The online management system

takes this process to a whole new level, and allows Lucas County to map parcels, link photos, track legal progress, acquisition type and project status, and ultimately maintain an organized portfolio of properties (Figure 10) (Woods, 2015).

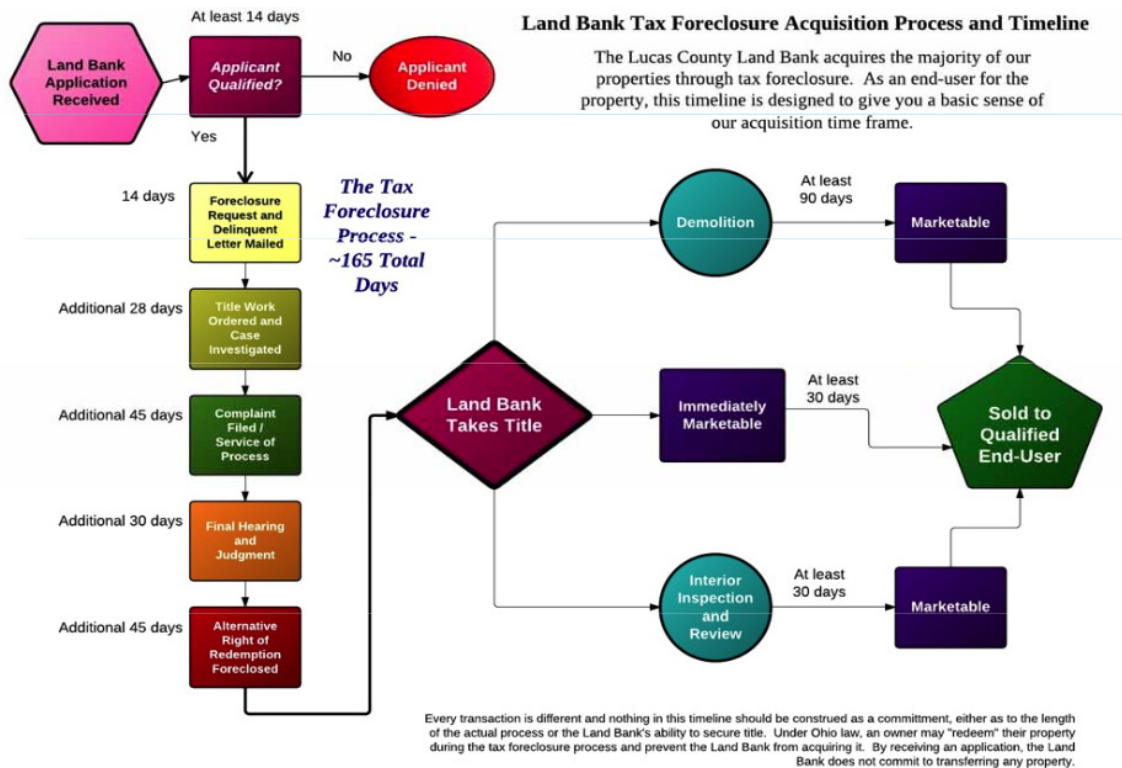


Fig. 9 Tax Foreclosure Acquisition Process

Source: Source: [wrlandconservancy.org/conferences2013](http://wrlandconservancy.org/conferences2013)

Project No:	3205	Parcel #:	02-03494
Status:	Reverter	Address:	530 W DELAWARE AVE TOLEDO OH 43610
Open Date:	02/10/2011	Applicant:	
Project Type:	Marketable	Delinquent:	2007
Acquisition Type:	Tax Foreclosure - Judicial	Class/Land Use:	R10/Structure

**Project Details** | Entities | Photos | Documents | Notes | Property Details | Alerts | Generate Report

Project Type: Marketable	Acquisition Type: Tax Foreclosure - Juc	Project Status: Reverte	Delinquent Year: 2007
Lot Type: Structure	Marketing <input checked="" type="checkbox"/> Marketable <input type="checkbox"/> Show on Site	Reverter Info <input checked="" type="checkbox"/> Reverter Reverter Date:	LCLB Ownership <input checked="" type="checkbox"/> Post Acquisition

## 530 W DELAWARE AVE

HOPPEL EDWARD L

FEBRUARY 16, 2011

Reverter Due

Reverter

Project St

Fig. 10 Online Management System

Source: [wrlandconservancy.org/conferences2013](http://wrlandconservancy.org/conferences2013)



While Oregon's LBA for brownfields is not the same entity in mission statement as that of Genesee County, Connecticut Brownfield Land Bank, Suffolk County Land Bank, or Lucas County Land Bank, these examples provide an overview of what components and ideas Oregon land banks could consider in developing their own program.

## Summary of Findings

Ultimately land banking for brownfields may be effective in Oregon if there are enough sites in jurisdictions to make the creation of a land bank profitable, and if these sites themselves are profitable to redevelop. While the focus of this research did not delve into the real estate economics behind property redevelopment, it is important to consider that not all brownfield properties in cities will be bought by a developer, and there is little mention of this issue within land banks studied. In other words, brownfields that are located on the outskirts of town, or in unincorporated land, may not be redeveloped into a profitable hub. Despite a site's remediation, the site may still not make the land bank money if it cannot be sold. Real estate economics of less profitable sites in cities can be considered in future research if cities are deciding if land banking can be useful. Likely the most profitable sites for a land bank will be brownfield sites in dominant transportation corridors or downtowns.

In comparing the provisions of the statute to land bank examples from around the country, another key point is clear: Land banks generally operate at a county-level as opposed to city-level. So far, few of the more successful land banks in the United States operate in just one jurisdiction- most are either county-level or even potentially state-level like in Connecticut. Since the land bank in Oregon is restricted to brownfield properties, there is a chance that it may not be cost-effective in terms of time and monetary investment to establish a local land bank that may only have a few properties to work on.

The land bank examples used also provide insight into the energy and time required to establish and run a well-functioning land bank. With the establishment Genesee County's Blight Crew and Lucas County's Online Management System, it is evident that a strong land bank takes time, energy, and leadership. While HB 2734 requires the creation of a Board of Directors, staff still needs to be employed to run the land bank- whether or not staff members come from city government is unclear, however a significant degree of power will be needed. In addition to start-up funds for acquiring properties, the land bank will also then need to consider salaries for employees. These findings suggest the possibility for the inclusion of Councils of Governments (COGs) and/or Metropolitan Planning Organizations (MPOs) in heading the land bank. If land banks can be created and run at a larger level, or can be created by public entities that already exist (including URAs), the land bank might be easier to establish.



## Attitudes Towards Brownfields and Land Banking in Oregon

A baseline scan on both the current remediation climate in Oregon and awareness of HB 2734 are crucial for answering the research questions:

- What are Oregon jurisdictions' primary barriers to brownfield redevelopment?
- Does the new land banking legislation have the ability to address the barriers reported?

By determining how the state is positioned to currently manage brownfields, it may be possible to hypothesize if and where land banking as a tool can fit into the policy landscape. This chapter will explain the statewide survey conducted for this research, as well as identify key results necessary for understanding cities' relationships to brownfields in Oregon.

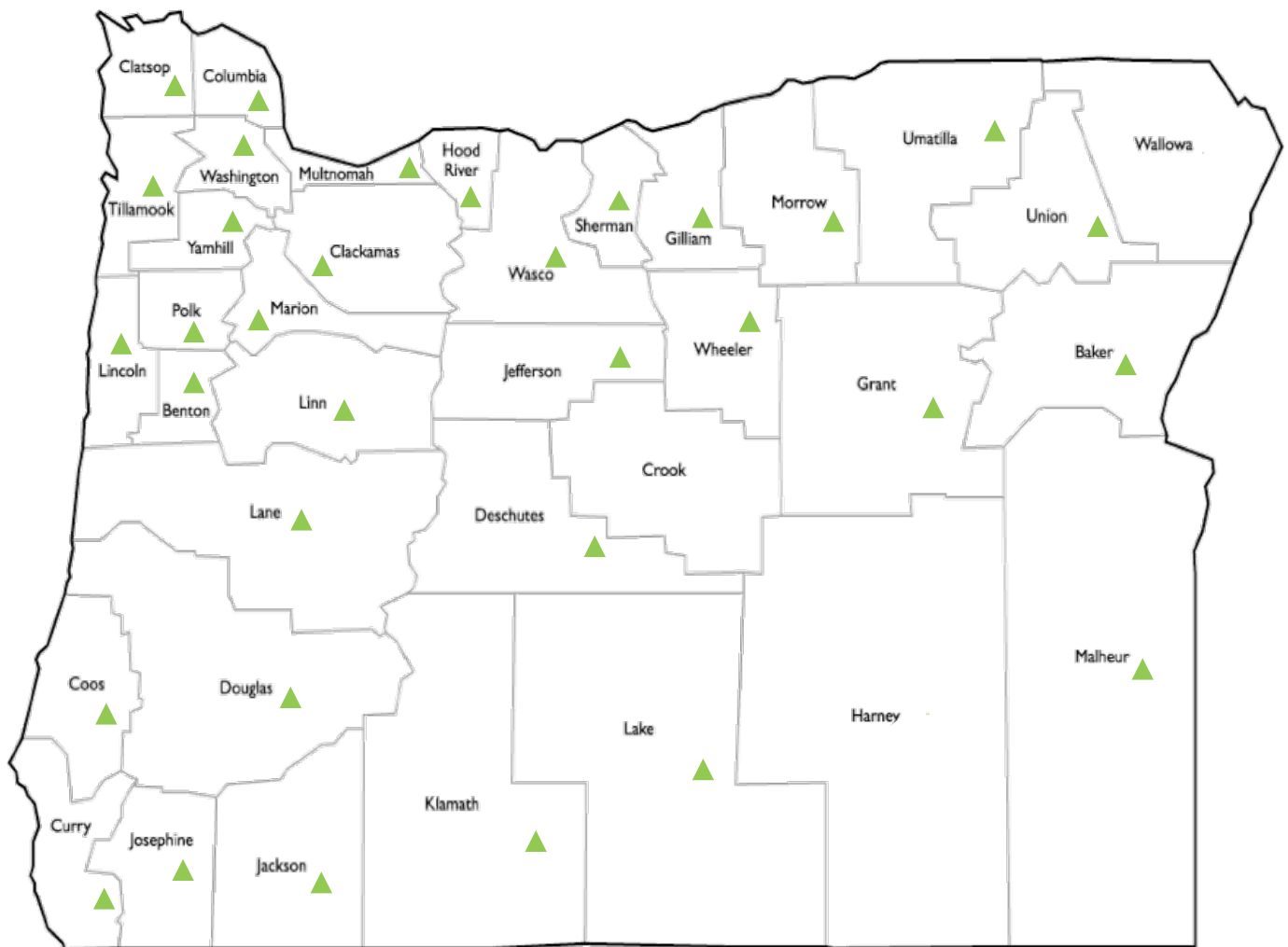
### Methodology

Every jurisdiction is a dynamic organism that can have a varying relationship to brownfields simply based on how many brownfields exist, how much funding the jurisdiction has, and how many remediation projects the jurisdiction has recently initiated. This research relied on a two-part survey to begin developing a comprehensive view of how cities throughout the state manage brownfields.

The 38 question survey (see Appendix C), was administered through Qualtrics, an online survey hosting site. The questions were broken into two sections which sought to summarize 1) the depth of relationship respondents had with brownfields in their local jurisdiction, and 2) their current knowledge and interest in land banking, respectively. With the help of the League of Oregon Cities, the survey was administered all 242 incorporated municipalities in Oregon. The survey was administered for three weeks in mid-March to early April. In total, 109 cities were represented and completed a survey, with an additional five abstaining (no brownfields in jurisdiction) which equated to a 45% response rate.

## Characteristics of Responding Municipalities

The 109 respondents can be characterized by several characteristics to provide a more in-depth understanding of the survey findings. First, the respondents are delineated by county. Of the 36 counties in Oregon, survey respondents represent 33 counties. The only counties not represented, as noted as stars on the below county map (Figure 11), were Crook (central Oregon), Harney (southeastern Oregon), and Wallowa (northeast Oregon). These 33 counties represent almost all the counties in the state, and the counties represented correlate with a higher concentration of brownfield sites according to the “Known Brownfield Sites” map in Appendix B.



*Fig. 11 Counties of Oregon Represented in Survey*  
Source: Kelsey Zlevor, 2016.



Second, respondents can be delineated by broader regions of Oregon (Table 4). While the state may not be wholly represented by county, the state is fully represented by region. Regions include: Central Oregon, North Coastal Oregon, Portland Metro, Northeast Oregon, Southeast Oregon, Southern Oregon, and Willamette Valley. With the highest number of respondents from the Willamette Valley and Northeast Oregon, these regions again correlate with a higher concentration of sites and may represent the views of jurisdictions that manage the most brownfields.

Region	Number of Cities in Region	Number of Respondents	Response Rate
Central Oregon	16	7	44%
Coastal Oregon	32	19	59%
Portland Metro	6	2	33%
Eastern Oregon	70	30	43%
Southern Oregon	24	8	33%
Willamette Valley	94	43	46%
<b>Grand Total</b>	<b>242</b>	<b>109</b>	<b>45%</b>

Table 4. Regions Represented by Survey

Source: Kelsey Zlevor, 2016.

Third, respondents can be characterized by their population size. Often the needs, opportunities, and challenges of smaller communities differ vastly from large urban areas, and making this distinction is crucial in interpreting the survey data. Table 5 quantifies the number of all cities in Oregon by population size. From this table it is important to recognize the small number of large cities, and large number of small cities in Oregon. From this table, the majority of the 109 respondents represent smaller jurisdictions. While there is at least some representation from a wide spectrum of population sizes, it is important to note that the survey responses likely reflect smaller jurisdictions' views more heavily than large cities because there are so many small cities in the state.

Class	Population Size	Number of Cities	Number of Responses	Response Rate
Class 6	50,000+	9	2	22%
Class 5	25,000-49,999	10	5	50%
Class 4	10,000-24,999	27	15	56%
Class 3	5,000-9,999	29	10	34%
Class 2	1,000-4,999	85	40	47%
Class 1	<1,000	82	37	45%
<b>Total</b>		<b>242</b>	<b>109</b>	<b>45%</b>

Table 5. Population Sizes Represented by Survey

Source: Kelsey Zlevor, 2016.

## Section I: Current Brownfield Knowledge

The following summarizes key findings from the first half of the survey which gauges the current brownfield remediation climate in Oregon such as how many projects a jurisdiction has been actively involved in, what barriers they have faced, and how the projects have been funded with what partners. It is important to note that this data set of respondents is smaller than the entire survey, as those respondents who indicated their jurisdiction had not been actively involved in brownfield remediation skipped the following question block and responded to section two only.

Summary of key findings:

- *Finding 1) There may not be a lot of brownfield remediation activity currently happening in the state compared to the number of classified sites, and of the active projects, the process often ranges in timeline and is unpredictable.*
- *Finding 2) There is not one single barrier to remediating brownfields that may be holding jurisdictions back, but an interrelated mix of several.*
- *Finding 3) Outside funding is crucial in the remediation process, and the most common grants cited that were successfully obtained to assist in cleanup were state and EPA funds.*
- *Finding 4) It takes a village– many groups of stakeholders are involved in the remediation process, and success is built on partnerships.*

***Finding 1) There may not be a lot of brownfield remediation activity currently happening in the state compared to the number of classified sites, and of the active projects, the process often ranges in timeline and is unpredictable.***

The majority of all survey respondents (70%) reported their jurisdiction had not been involved in any local brownfield remediation projects within the last five years, whereas only 25% of respondents reported that they had (Figure 12). Of the jurisdictions that had been involved in remediation projects, the average number of projects a jurisdiction had started over the last five years was one project, and the average number of completed projects in the last five years was one project. While a significantly smaller percent of respondents reported their jurisdiction was actively remediating, those that were active did not cite a sizeable amount of completed projects. This may be because when asked to estimate the amount of time it took to complete the longest-running brownfields remediation project undertaken in the last five years, the results ranged from six months to five years. This vast range in project completion is dependent on many factors, such as a jurisdiction's individual barriers, and complicated project details specific to the site, such as determining liability, or the extent of cleanup needed. However, these results may suggest that even for an actively remediating jurisdiction, the brownfield process can be long and uncertain as each brownfield is its own microcosm of opportunities and obstacles.

An additional factor to consider is sheer numbers— some jurisdictions have fewer brownfields to remediate than others. While the specific number of brownfields in each jurisdiction was not collected, the results suggest that a smaller percentage of Oregon cities are actively remediating brownfields, which could further suggest barriers to redevelopment that need to be addressed or streamlined.

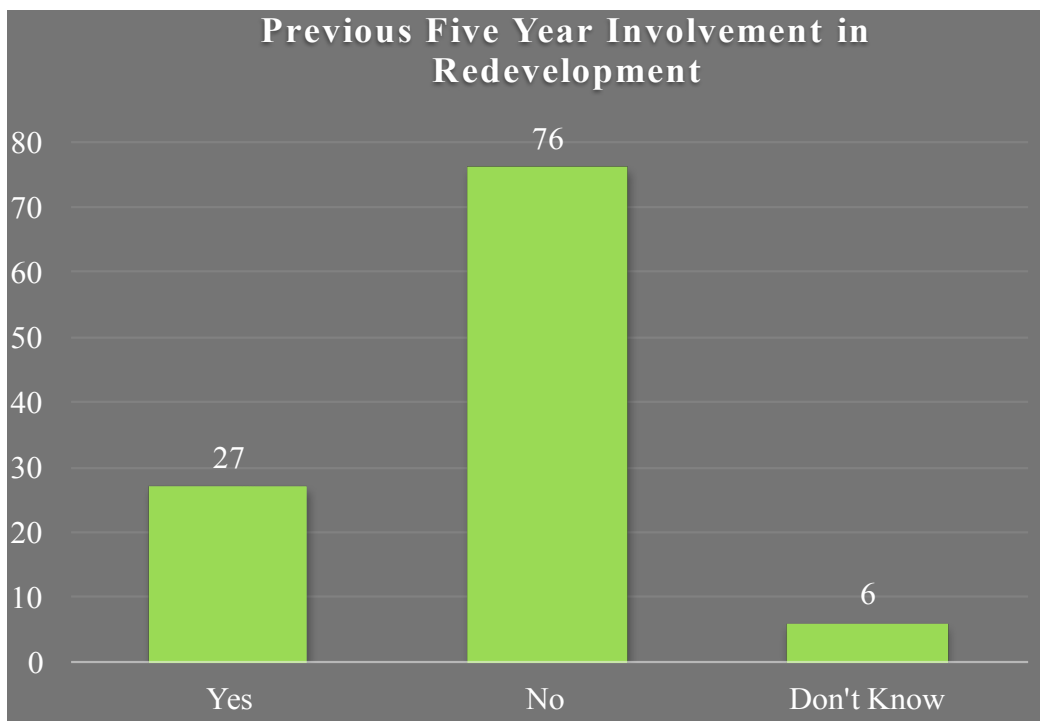


Fig. 12 Involvement in Brownfield Redevelopment in the Last Five Years by Number of Jurisdictions  
Source: Kelsey Zlevor, 2016.

*Finding 2) There is not one single barrier to remediating brownfields that may be holding jurisdictions back, but an interrelated mix of several.*

The actively remediating respondents were asked to rank a series of potential barriers, listed in the below table, in order of difficulty from one to seven, with one being the most difficult barrier. Respondents cited the following in order of ranking as the top four barriers to remediating brownfields in their jurisdiction: 1) Funding- not enough options provided by the state; 2) Determining liability of a contaminated property; 3) Funding- not enough flexibility in local government funding to remediate; and 4) Personnel availability/staff time (Table 6).

These results imply that barriers to brownfield remediation span a full gamut of issues: Not only is there lack of funding support for brownfields, but there are more personalized local government issues such as determining liability of each site and budgeting. The issue of funding at a local government level suggests that jurisdictions do not immediately have funds available to remediate, and it cannot be assumed that large sums are available for more severe cases. If these funds are not available, it is unlikely a jurisdiction would want to assume liability for a property with unknown contamination. Also, since brownfield issues are so dynamic, it may be impossible for staff to work part-time on these issues and still achieve success, further suggesting the need for full-time staff or authority to oversee these issues. It is interesting to note how staff time is also almost simultaneously ranked as a top barrier and a low barrier. This suggests that the barrier classification was based on the size of the jurisdiction as staff time is less available in small jurisdictions than large ones.

This exceptionally complicated mix of variables suggests that any one policy tool will not be a silver-bullet for streamlining the entirety of the remediation and redevelopment process, but certainly an increase in tools available can help mitigate the strain of some of these problems.

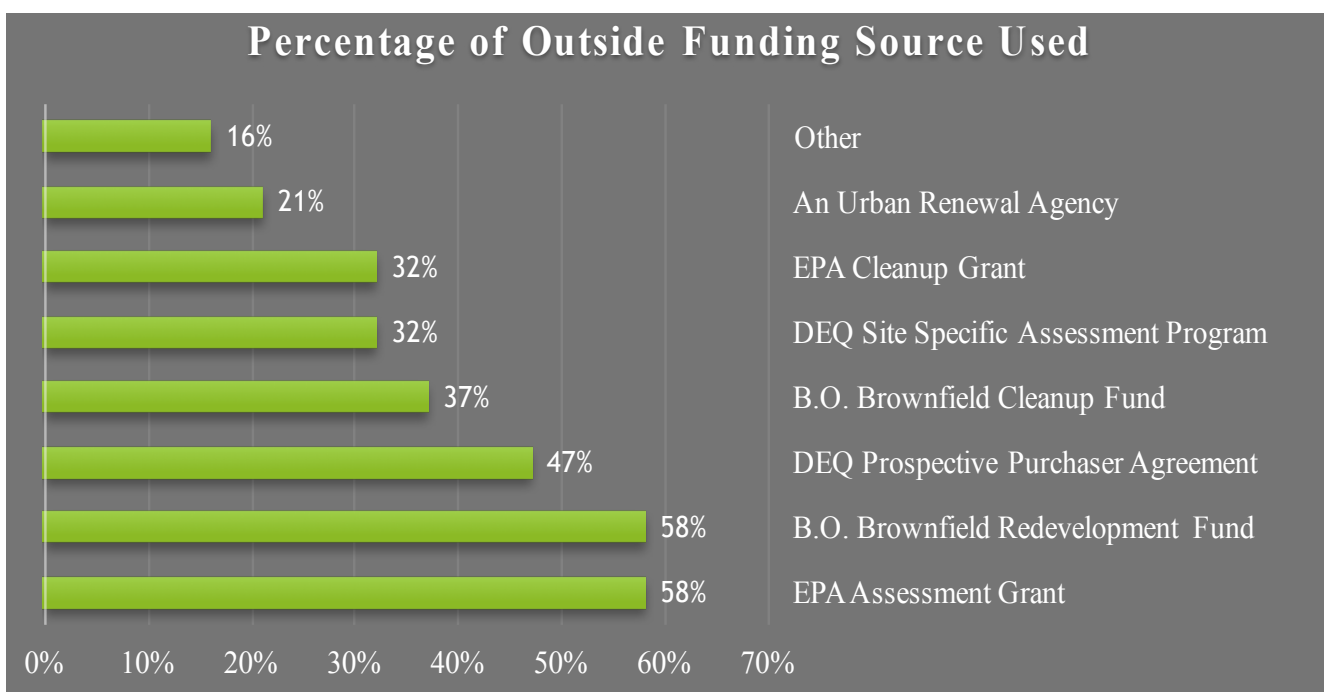
Barrier	Percent of cities that reported in top 4 barriers	Percent of cities that reported in bottom 3 barriers
Funding- not enough funding options provided by the state	72%	11%
Determining Liability of a Contaminated Property	56%	28%%
Funding- not enough flexibility in local government funding	56%	33%
Personnel Availability/Staff Time	50%	67%
Legal Barriers	44%	28%
Other:	17%	60%
Public Engagement- agreeing on a collective vision	6%	100%

Table 6. Barriers to Brownfield Redevelopment  
Source: Kelsey Zlevor, 2016.

***Finding 3) Outside funding is crucial in the remediation process, and the most common grants cited that were successfully obtained to assist in cleanup were state and EPA funds.***

Eighty percent of respondents reported that their jurisdiction applied for funding or technical support from the state in the last five years to support a brownfield remediation project, and 75% reported they received all funding and technical assistance tools applied for to put towards a remediation project. Of the 25% that were denied, 75% of those funds were EPA grants. While EPA is often the most applied-for source, likely because the grants are much larger sums, these can often then be the hardest to obtain. In totality, the most commonly received funding sources in order of popularity were: The EPA Assessment Grant, Business Oregon Brownfield Redevelopment Fund, DEQ Prospective Purchaser Agreement, the Business Oregon Brownfield Cleanup Fund, and the DEQ Site Specific Assessment Program (Fig. 14).

From these results, it is evident that jurisdictions rely very heavily on outside funding, and rarely do cities inherently have the funds to facilitate a cleanup. This data highlights the necessity of having a solid financial model for remediation sites that include plausible grants and outside funding sources. It is also important to note that the Urban Renewal Agency scored the lowest in terms of providing funds, further supporting the previous hypothesis that often URAs are equally as ill-equipped to financially support remediation as the jurisdiction itself.

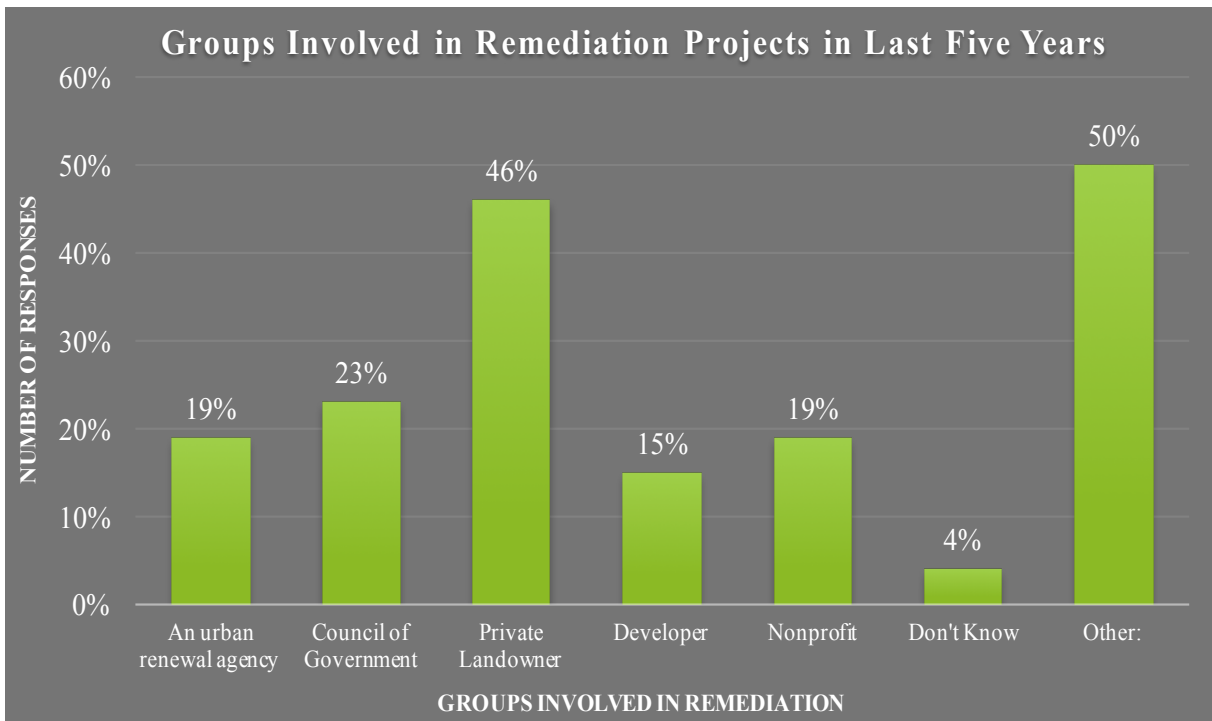


**Fig. 14 Percentage of Outside Funding Sources Used in the Last Five Years**  
Source: Kelsey Zlevor, 2016.

***Finding 4) It takes a village– many groups of stakeholders are involved in the remediation process, and success is built on partnerships.***

When asked to list the stakeholders involved in remediation projects within the last five years, results varied from one partner to six (Figure 15). This wide range of partnerships is important to consider, as it means balancing a complicated mix of input and perspectives. Especially as noted in Finding 2, if a barrier to remediating brownfields is staff time, it is possible that the immense amount of consensus building and coordination among stakeholders is enough to drain a busy planning office. In addition, when asked if the respondent’s jurisdiction had an urban renewal agency that has assisted in brownfield redevelopment in the past five years, 76% of respondents said no. This may further support the previous findings of URA research in Oregon that correlation of URAs to brownfield parcels does not necessarily equate to collaboration on remediation projects.

The most common partner was a private landowner, which suggests brownfield remediation by cities is usually taking place through one-on-one agreement and negotiation with the current holder of the property as opposed to a business or organization. Of those that listed “Other,” the most common responses were the DEQ, or a local school.



*Fig. 15 Groups Involved in Remediation Projects in the Last Five Years*  
Source: Kelsey Zlevor, 2016.

## Section II: Land Banking

The following summarizes key findings from the second half of the survey, which focuses on HB 2734, and land banking for brownfields. Questions sought to determine respondents current level of knowledge with land banking and gauge their interest in potentially implementing HB 2734. One hundred and two respondents completed this part of the survey.

The key findings that will be explored in depth are:

- *Finding 5) Most respondents have little familiarity with land banks and their function.*
- *Finding 6) For those who think a land bank could be helpful, the ways in which respondents believe they could be helpful positively correlate to the abilities provided in the legal provisions. In terms of what cities claim they still need to remediate sites, these needs often match the legislative provisions as well.*
- *Finding 7) While land banking could be helpful for some jurisdictions, there is still an unmet need for jurisdictions that are too small for a land bank.*

**Finding 5) Most respondents have little familiarity with land banks and their function.**

Of the 109 cities surveyed, 71% of respondents were unaware of HB 2734 before taking the survey (Figure 16). This overwhelming majority suggests a lack of trickle-down knowledge between the state legislature and cities, and that cities have a new tool at their disposal that they do not know about. Of the 27% of respondents who knew about HB 2734, 34% of those respondents were still unfamiliar with land banking and its provisions and abilities. This finding suggests that cities need additional materials to learn more about land banking and land banking for brownfields. If information is not provided, it is unlikely cities will implement an unknown program.

In addition, 43% of respondents claimed they were unsure whether or not their jurisdiction could use a land bank, while 39% said they did not think their jurisdiction could use a land bank (Figure 17). Although a large percent of respondents had not heard of HB 2734, many believe they still do not need a land bank despite listing significant barriers to redevelopment in section one. The creation of more literature around land banking for brownfields may help aid jurisdictions in decision-making and resolve this discrepancy.

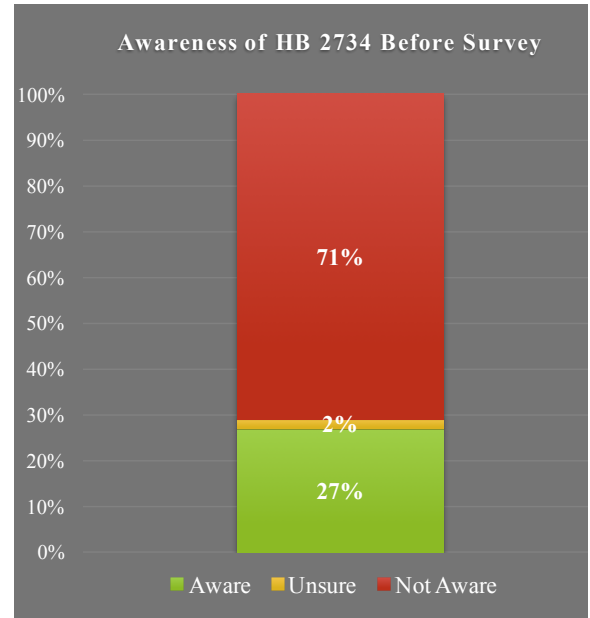


Fig. 16 Awareness of HB 2734

Source: Kelsey Zlevor, 2016.

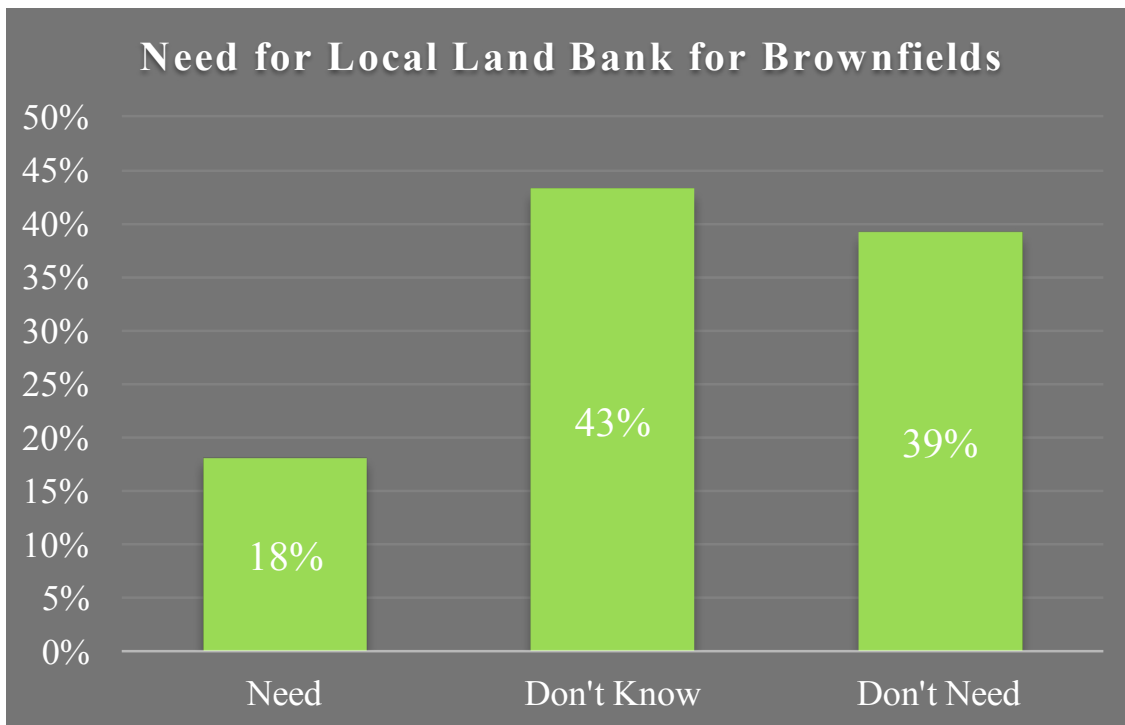


Fig. 17 Percent of Respondents on Attitudes Towards Needing a Land Bank

Source: Kelsey Zlevor, 2016.



In addition, by cross-tabulating those who responded to the first question asking about involvement in land banking, and the awareness of HB 2734, even the majority of those who said their city had been actively remediating in the last five years had not heard of the legislation (Table 7). This finding suggests even further the lack of awareness of the legislation.

		<b><i>Has your city been involved in local remediation projects within the last five years?</i></b>
		<b><i>Yes</i></b>
<b><i>Were you aware of House Bill 2734 before this survey?</i></b>	<b><i>Yes</i></b>	10
	<b><i>Don't Know</i></b>	0
	<b><i>No</i></b>	17

Table 7. Cross-tabulation of Awareness and Involvement  
Source: Kelsey Zlevor, 2016.

***Finding 6) For those who think a land bank could be helpful, the ways in which respondents believe they could be helpful positively correlate to the abilities provided in the legal provisions. In terms of what cities claim they still need to remediate sites, these needs often match the legislative provisions as well.***

An additional series of questions asked respondents to write-in thoughts and opinions about land banking potential. Some of the most common reasons cited for local interest in land banking for brownfields were: The need to acquire and assemble land, the need for facilitating thoughtful development, and an interest in cleanup without incurring liability. All of these topics are possible through HB 2734, and suggest that those aware of land banking are fairly clear as to how it could be used for brownfields. The most common needs to facilitate better/more expedient development cited by cities were: Funds, more information on brownfield identification and whether or not a jurisdiction has brownfields, and most importantly, a roadmap, additional guidance, or a champion that could outline the details of how a land bank works. These findings suggest two critical points about brownfield redevelopment: Not only is more information needed to explain land banking for brownfields to cities, but in some cases cities are still stuck on how to identify a brownfield in the first place. While providing land banking information may be helpful, some cities may still need the foundational tools for what a brownfield is, and how it is identified. Ultimately, 52% of survey respondents provided their email to receive the final report. The need for additional educational material is strong, and ranges from the basics of brownfields, to a more detailed understanding of land banking.

***Finding 7) While land banking could be helpful for some jurisdictions, there is still an unmet need for jurisdictions that are too small for a land bank.***

Moving forward, land banking education and outreach should be targeted at larger jurisdictions, as some smaller cities did not cite brownfields as a crucial problem. However, for small cities that only have one or two brownfield sites, these sites are still problematic but are not enough to generate momentum for the creation of a local land bank. A key area of future research could be additional legislative provisions that enable cross-jurisdictional land banks to address this issue.

## Implications

From both sections of the survey, it seems that while much can be gained from HB 2734, much can be improved as well (Table 8).

HB 2734 provides a good solution to liability concerns, as Oregonians arguably have better protection under this legislation than is granted in any other part of the United States. The bill also enables stakeholder interaction through the requirements of who fills the Board of Directors, which is crucial based on the finding that so many stakeholders are actively involved in the remediation process.

Survey Data Component	HB 2734 Response
Barrier: Liability	✓
Enable stakeholder interaction	✓
Provide educational materials	✗
Barrier: Funding	✗
Equity of protection	✗

Table 8. HB 2734 Implication Table  
Source: Kelsey Zlevor, 2016.

However, it is also clear that there is a disconnect and general sense of confusion over how a land bank can help redevelop brownfields, and what a land bank even is. Especially without an example ordinance to use, cities may be confused as to what they are even presenting to city council. While the state has made a large step passing HB 2734, there is still a long road ahead in terms of helping cities make the leap towards establishing a land bank. In addition, several respondents reported continued confusion over identifying local brownfields. This suggests some cities may truly be at step one of deciding on a land bank, as a city will not create a land bank if they do not know how many brownfields they have.

Maybe most importantly, HB 2734 also does little to address the reported funding barrier. Since it is enabling legislation, no money is tied to the provision. Given the need for start-up funds to create a land bank, as well as a budget to pay for land bank employees, HB 2734 arguably exacerbates the the funding barrier by increasing the need for funding without providing solutions. Based on the finding that outside funding is already crucial in remediation, asking jurisdictions to find additional funds will likely not yield many land banks.

Lastly, HB 2734 may serve only specific jurisdictions, and likely those that have funding and staff capacity to establish a land bank. This forces smaller cities who may not have funds and staff to forgo liability protection because they cannot establish a land bank, and leaves brownfield properties in underserved areas in a further state of blight. Equity considerations to extend liability protection to all cities may be an area of future discussion.

In order to better explore and understand land banking, the following chapter will highlight qualities of cities who may benefit from a land bank, as well as provide recommendations moving forward as to what actions can be taken by which parties to make land banking a viable brownfield remediation tool.



## Recommendation and Tools for Successful Land Banking

With a clear gauge of current attitudes towards land banking in the state, an understanding of the statute, and full consideration of other examples around the country, jurisdictions can begin to decide whether land banking is for them and what is needed to start the process. While each jurisdiction needs to decide if a land bank is appropriate for them and what its structure would be, several universal ideas can be distilled from previous examples to help shape a land bank's foundation. This chapter provides an overview of how to weigh conditions that could suggest the productivity of a land bank and provides recommendations across a spectrum of parties for future legislative action that can increase the land bank's viability.

One common piece of commentary from the survey was that land banks could be a challenge for communities with smaller staff or with few brownfield sites, but who still seek the provisions provided by the land bank. This finding suggests that the land bank could have specific benefactors with specific qualities. In other words, the start-up cost and time to develop a land bank might reap immense dividends for some jurisdictions, but provide less return on investment for others. Identifying these qualities is crucial to ensure land banks are being employed in the right locations to avoid wasted time and organization. Jurisdictional qualities that may suggest eligibility for a productive land bank based on the work of this research include:

- Sizeable number of brownfield properties in area (more than 3-5)
- Little to no funding to begin to remediate properties
- Need for ability to deploy financial resources on private land
- Sufficient number of city staff or champions to serve as directors (between 5 and 11)
- Brownfield properties located in valuable real estate (downtowns, etc.) that can generate significant future tax revenue
- Suspicion of contamination on several sites the city would like to acquire but is hesitant to own for liability reasons
- Lack of Urban Renewal Agency in vicinity
- Need for local job creation (if maintenance crews are employed)
- Interest in engaging communities in public visioning and civic engagement

If a jurisdiction displays enough of these qualities, a land bank might be worth pursuing. However, much of the research conducted suggests that land banking as it currently stands in the state may not be efficient, especially when considering the start-up funds, staff, and general organization needed. Other criteria to consider are the character of the brownfield sites in the local community in terms of real estate factors. If the land is not going to turn a profit or be attractive to a developer even after it is remediated, a land bank may not do much good. However, each jurisdiction must decide for itself whether or not a land bank is a worthwhile investment.

As a summary to further facilitate the decision, a synthesis matrix is provided below:

*Table 9. Abilities of Cities, URAs, and Land Banks: Synthesis Matrix*

*Source: Kelsey Zlevor, 2016.*

	<b>Cities</b>	<b>URAs</b>	<b>Land Bank</b>
<b>Can hire employees</b>	✓	✓	✓
<b>Development is guided by Comprehensive Plan</b>	✓	✓	✓
<b>Can apply for grant funding</b>	✓	✓	✓
<b>Powers span entire jurisdiction</b>	✓		✓
<b>Formal process to seek to recover remediation costs from previous owner</b>	✓		✓
<b>Can hold, purchase, acquire, assemble property</b>	✓	✓	✓
<b>Unpaid governing body</b>		✓	✓
<b>Can hold land without paying property tax</b>	✓	✓	✓
<b>Does not use and is not tied to General Fund</b>			✓
<b>Not liable for pre-existing contamination for properties in purview</b>			✓

Ultimately, depending on the size and need of the jurisdiction, as well as the key abilities a jurisdiction is seeking to employ, a land bank could be a successful brownfield tool. To further illustrate the manifestation of this tool, key ideas and considerations are explained in Appendix D, the Getting Started Guide. However, since land banking for brownfields is such a new tool in Oregon, it is clear that several key actions must still be taken to facilitate the tool's viability. These actions can be broken into key actors and are outlined below by federal government, state government, and local jurisdictions.

### **Federal Government**

- The EPA can work with the state to track progress and provide information to other states: Since HB 2734 provides such a new concept for land banking, the EPA can serve as the conduit between Oregon's progress or lessons learned and other states. The current EPA website has many resources for brownfield development, but has no information on land banking. By working with Oregon in the coming years, the EPA could provide a case study report or summary about the future impacts of HB 2734 to help connect the idea to other interested states.

### **State Government**

- Continue, if not amplify, efforts to help jurisdictions identify brownfields: Several survey respondents cited lack of ability to identify a site as a brownfield or as needing more information as to what a brownfield is. Indeed, identifying a brownfield and how many sites exist is a formative step in eventually deciding whether or not a LBA is even a useful tool. One method is disseminating brownfield information through websites and resources other than the DEQ and the Brownfield Coalition site. Using the League of Oregon Cities for example may be a method for reaching communities, as well as targeting regional councils of governments. Helping all jurisdictions complete this first step is vital, as it can also help determine where partnerships are possible between jurisdictions that have many brownfields, and jurisdictions that may only have a few.
- Develop pilot program: While Salem is being considered a potential host site for the first trial land bank, Business Oregon can consider creating an RFP process for communities to apply for a trial land bank. In other words, cities can apply to receive assistance in being one of several cities to establish the first land banks for brownfields in Oregon, and can work hand in hand with state groups to create the land bank. Not only would a pilot help cities understand the process, but land banking could take root in several cities as exemplars of the concept for the rest of the state.
- Include enabling provisions to allow multi-jurisdictional land banking: Land banking can be an excellent tool for multiple brownfields, but small jurisdictions establishing a LBA for one or two sites may not be feasible. The state can further amend HB 2734 to enable cross-jurisdictional land banks that serve multiple cities. One possible way to initiate these partnerships is through a self-reporting statewide database that enables cities to record and see the number of brownfields reported

in their area and in their neighbors, and pair up to achieve a profitable number of sites the land bank can acquire. Based on case studies, land banks that span broader regions, like counties, may be more successful. This also would provide opportunities for COGs and other regional groups to play a role.

- Provide explicit grants for LBA start-up funds: Currently finding initial funding may be the largest barrier to implementing a LBA. While the state has myriad funding opportunities for brownfield scoping, remediation, and redevelopment, no funding source exists for first developing a land bank. By creating another funding opportunity for this explicit purpose, more jurisdictions who do not have readily available start-up funds may be able to create a land bank. This can be done through a reallocation of funds through Business Oregon, or funding through IFA. Should new funding not be able to be established, the way grant money is allocated could be restructured. For example, priority for remediation grant funding can be awarded to cities with a land bank.

### Local Jurisdictions

- Inventory and map local brownfield sites: Jurisdictions can determine whether or not a land bank is of interest based on how many sites are located within their boundary. If there are only one or two sites and the jurisdiction is able to remediate them with limited issues, a land bank may not be needed. If many brownfields exist, a land bank may be useful. Additionally, if the jurisdiction only has several brownfields but still seeks the provisions of the land bank, this may indicate the need for a future partnership. Without surveying the current number of brownfield parcels, it is difficult to ascertain whether or not a land bank is useful for an individual jurisdiction. If help is needed for the inventory, jurisdictions can refer to the Business Oregon or the DEQ for assessment grants.
- Determine if start-up funding is available: Start-up funds and initial investment will be needed to begin the land bank. Jurisdictions can assess their general fund to determine if start-up funds can be allocated. In the event that funds are not available, creative solutions can be implemented. For example, in Ohio each county treasury can create a delinquent tax and assessment collection (DTAC) fund, where 2.5% of all delinquent property taxes collected by the county treasurer are deposited in the fund and county commissioners appropriate a portion of the funds to the land bank (see Appendix D).

Overall, the mobilization of these actors in the myriad ways described is required to bring the full capacity of HB 2734 to fruition. In terms of priority, future research and policy development related to start-up funding and cross-jurisdictional land banking is the most critical.



## Conclusion

Oregon is on the horizon of an exciting time for brownfield remediation. The utilization of land banking for brownfields is a developing method, and will be shaped by the needs of its users— the several hundred jurisdictions in the states looking to remediate sites easily and effectively. These needs have been distilled from survey responses of jurisdictions currently remediating properties. From this research, the current status of brownfield redevelopment in the state suggests that there are more inactive sites than active, and the process is often long and unpredictable. In addition, sites face several barriers to remediating brownfields, such as finding funding and determining liability. Outside funding is critical, and it is often partnerships of people and funding sources that contribute to success. In terms of HB 2734, more jurisdictions are unaware of the legislation than aware, which suggests the need for further outreach to aid jurisdictions in deciding whether or not to pursue a land bank. Although a land bank can be helpful for many, there is still an unmet need for small jurisdictions that are unable to establish their own land bank for financial or staff reasons.

Adding the findings of the current redevelopment status quo to the gauged current attitudes towards land banking, this research in total suggests an opportunity for land banking to add to the arsenal of available redevelopment tools if significant steps are taken at the state level to increase its tangibility. If jurisdictions are seeking a way to reduce liability, and what could be a financially self-sustaining system, a LBA is a viable option.

However, establishing a LBA is not without obstacles. Several key aspects must be taken into account for land banking to reach its potential, most notably the need for cross- or multi-jurisdictional land banking, and the need for an initial grant pool to provide land bank start-up funding. In addition, the state could support a pilot program for interested cities to help them create land banks. As HB 2734 currently stands, the jurisdictions who may benefit most and more immediately are jurisdictions with a significant number of sites, start-up funding that can be allocated from the general fund, and enough interest and leadership to staff the agency's board. In order to make the provisions of the legislation open to everyone, the state will likely need to provide start-up funding and more support to meet smaller jurisdictions halfway. Another way to address the equity issues of liability protection is to increase legal opportunity for multi-jurisdictional or county land banks, where COGs or other regional groups can take the leading role. Not only might these groups have more initial funding and organizational capacity than starting a new public entity like a land bank, but the entity could acquire more properties in more cities, similar to several national examples.

Despite the additional considerations needed for HB 2734 in the coming months and years, the legislation represents an important landmark as a gateway into the fourth generation of land banking. Leading the way in a national sense, HB 2734 provides jurisdictions the opportunity to begin exploring vacant sites with more security than has been provided before. While establishing a land bank might not be mutually beneficial for every jurisdiction, those that choose to pursue one should consider how its form and structure can transform a community. By thinking critically about how the state can better shape this tool's ability to foster more local control around remediation and redevelopment, Oregon communities may be able to redevelop abandoned, contaminated spaces into sources of pride and vitality throughout the state.



# Appendix A. House Bill 2734

78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

## Enrolled House Bill 2734

Sponsored by Representative READ, Senator HANSELL, Representative FREDERICK; Representative HUFFMAN, Senators MONNES ANDERSON, ROBLAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to remediation of contaminated property; creating new provisions; and amending ORS 244.050, 465.255, 466.640 and 468B.310.

**Be It Enacted by the People of the State of Oregon:**

### LAND BANK AUTHORITIES

**SECTION 1.** As used in sections 1 to 8 of this 2015 Act:

(1) "Authority" means any public land bank authority created pursuant to sections 1 to 8 of this 2015 Act.

(2) "Brownfield" has the meaning given that term in ORS 285A.185.

(3) "Local government" means a local government as defined in ORS 174.116 or a inter-governmental entity created under an intergovernmental agreement between two units of local government under ORS 190.010.

(4) "Remedial action," "remedial action costs" and "removal" have the meanings given those terms in ORS 465.200.

**SECTION 2.** (1) A local government may, upon its own motion, consider whether it is advisable to create an authority for the purpose of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties that are located within the geographic boundaries over which the local government has jurisdiction.

(2) If the local government, after public hearing according to the local government's rules, determines that it is wise and desirable to create in an authority the powers and duties set forth in sections 1 to 8 of this 2015 Act, the local government shall by ordinance or resolution create such an authority. The ordinance or resolution shall set forth:

(a) The name of the authority, which shall be "The Land Bank Authority of (local government), Oregon" or other similar distinctive name.

(b) The number of directors of the authority, which must be an odd number not less than five or more than 11.

(c) The names of the initial directors and their initial terms of service, which may not exceed four years.

(d) Other provisions that may be appropriate and not inconsistent with sections 1 to 8 of this 2015 Act or the laws of Oregon.

(3) Upon the adoption of an ordinance or resolution under subsection (2) of this section, the authority shall be deemed established as a municipal corporation of the state and as a

body corporate and politic exercising public powers. Notwithstanding any law to the contrary, the authority shall exist as a legal entity separate from the local government that created the authority.

(4) An authority organized under this section shall have all the powers and duties contained in sections 1 to 8 of this 2015 Act.

**SECTION 3.** (1) An authority shall be managed and controlled by a board of directors. The initial board of directors shall be appointed by the local government that created the authority. Subsequent directors shall be appointed as provided in this section and the rules adopted by the authority.

(2) The regular term of a member of the board is four years. The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. Before the expiration of the term of a member, a successor shall be appointed whose term begins on January 1 of the year next following. A member is eligible for reappointment but may serve no more than a total of three terms, including terms shorter than four years. If there is a vacancy for any cause, a new member shall be appointed to complete the unexpired term, subject to the requirements of subsection (3) of this section.

(3) The board of directors must include:

(a) At least one director who is also a member of the governing body of the local government that created the authority;

(b) At least one director who represents the largest municipal corporation within the geographic jurisdiction of the local government that is not a school district;

(c) At least one director who represents the largest school district within the geographic jurisdiction of the local government; and

(d) Subject to the maximum number of directors allowed by the ordinance or resolution establishing the authority, one or more directors who are also members of civic organizations that serve the same geographic jurisdiction as the authority and that have a purpose or mission that aligns with that of the authority.

(4) The board shall hold an annual meeting. The board shall select from among themselves at the annual meeting a chairperson, vice chairperson, secretary, treasurer and other officers as the board determines.

(5) The board shall adopt and may amend rules for calling and conducting its meetings and carrying out its business and may adopt an official seal. All decisions of the board shall be by motion or resolution and shall be recorded in the board's minute book, which shall be a public record. A majority of the directors of the board constitutes a quorum for the transaction of business, and a majority is sufficient to pass a motion or resolution.

(6) The board may employ employees and agents as the board deems appropriate and provide for their compensation. The employees and agents of the authority are not employees or agents of the local government that created the authority.

(7) A director is not entitled to compensation for service on the board of an authority.

**SECTION 4.** (1) An authority shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties, including without limitation the power to:

(a) Sue and be sued, plead and be impleaded in all actions, suits or proceedings brought by or against the authority.

(b) Acquire, hold, use, enjoy and convey, lease or otherwise dispose of any interest in:

(A) Brownfield properties within the authority's geographic jurisdiction;

(B) Properties undergoing removal or remedial action under the supervision or approval of the Department of Environmental Quality that are within the authority's geographic jurisdiction; and

(C) Personal property.

(c) Conduct removal or remedial action on real property in which the authority has a property interest under an agreement with the Department of Environmental Quality.

(d) Assist parties that are interested in acquiring a property interest in real property held by the authority with entering into an agreement with the Department of Environmental Quality under ORS 465.327.

(e) Enter into contracts with any person.

(f) Borrow moneys and issue notes and revenue bonds for the purpose of carrying out the authority's powers.

(g) Invest moneys into property, securities or other instruments.

(h) Obtain insurance.

(i) Solicit and accept grants, gifts or other assistance from a public or private source.

(j) Develop and prepare plans or reports to evaluate the authority and to guide future improvements to the processes and operations of the authority.

(k) Develop priorities for the use of property of the authority that may include, but are not limited to, public use, affordable housing, open space and commercial or industrial development.

(L) Adopt and amend ordinances and resolutions.

(2) An authority may establish an advisory committee to advise the board of directors of the authority on the interests of the community in the actions of the board and the authority. If a committee is established, a member of the committee shall serve as a liaison between the board of the authority and a community of interest affected by a decision or proposed decision of the board.

(3) An authority shall give public notice of a proposed disposition of any interest in real property held by the authority. The notice shall allow 30 days for the public to comment on the proposed disposition. The authority shall provide responses to comments prior to final disposition of the property interest.

(4) An authority shall annually prepare and submit a report to the Governor and, in the manner described in ORS 192.245, submit the report to the Legislative Assembly. The report must summarize the activity of the authority, including a list of real properties in which the authority has acquired or disposed of a property interest, the method of acquisition or disposition, the price paid or received for each property and additional information as requested by the Governor, the President of the Senate or the Speaker of the House of Representatives.

**SECTION 5.** (1) Except as provided in subsection (2) of this section, the debts, obligations and other liabilities of an authority are not a general or other obligation or liability of the local government that created the authority.

(2) A local government may incur debt, including the issuance of bonds under any bonding authority available to the local government, on behalf of an authority created by the local government and, by ordinance or resolution, deem a debt incurred under this subsection to be a general obligation of the local government and a charge upon its tax revenues.

**SECTION 6.** (1) Except as provided in subsection (2) of this section, an authority, all assets owned by the authority, the income from those assets, and all bonds issued by the authority, together with the coupons applicable to those bonds and the income from the bonds, shall be exempt from all taxation in the State of Oregon.

(2) The real and personal property owned by the authority and leased to a third party shall be subject to property taxation if the property would be subject to taxation if owned by the lessee.

**SECTION 7.** (1) An authority shall keep a record of the authority's remedial action costs.

(2) Notwithstanding any law to the contrary, an authority may, based on the record compiled by the authority under subsection (1) of this section, bring an action to recover from a person liable under ORS 465.255 or 465.260 the amount of the authority's remedial action costs.

(3) In an action brought by an authority to recover remedial action costs under ORS 465.255 (1) or damages under ORS 468B.310 (1), the court may allow the authority to recover costs, expert witness fees, reasonable attorney fees and prejudgment or preaward interest if the authority prevails in the action.

**SECTION 8.** (1) Dissolution of an authority may be initiated:

(a) By resolution of the board of directors of the authority, filed with the local government that created the authority, if the board determines that dissolution of the authority is in the best interest of the community served by the authority; or

(b) By resolution of the local government that created the authority:

(A) If, at the time of the annual meeting of the board, board members have not been appointed to fill vacancies on the board as required by section 3 of this 2015 Act; or

(B) If the local government determines that dissolution of the authority is in the best interest of residents within the jurisdiction of the local government.

(2) Within five days after a resolution of the board is filed or a resolution of the local government is adopted under this section, a copy shall be filed with the secretary of the authority, if any, or with any other officer of the authority who can with reasonable diligence be located.

(3) If there are no members of the board of directors of the authority, the local government shall act as or appoint a board of trustees to act on behalf of the authority to develop and implement a plan for dissolution.

(4) Within 60 days after initiation of the dissolution proceeding, a plan of dissolution shall be filed with the office of the clerk of the county in which the authority is located and shall be available for inspection by any interested person.

(5) Upon approval of dissolution by the governing body of the local government that created the authority, the authority shall be declared dissolved. If the local government has not appointed a board of trustees under subsection (3) of this section:

(a) The board of directors shall constitute a board of trustees that shall pay the debts or procure releases of the debts and dispose of the property of the authority; or

(b) The board of directors may designate the local government as the board of trustees for the purpose of winding up the affairs of the authority.

(6) After the affairs of the authority have been fully settled, all books and records of the authority shall be deposited by the board of trustees in the office of the county clerk of the county in which the authority is located. At the same time, the board of trustees shall execute under oath, and file with the local government that created the authority, a statement that the authority has been dissolved and its affairs liquidated. From the date of the statement, the corporate existence of the authority is terminated for all purposes.

**SECTION 9.** ORS 465.255 is amended to read:

465.255. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in subsection (1)(c) to (e) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(c) Any fiduciary exempted from liability in accordance with rules adopted by the Environmental Quality Commission under ORS 465.440.

**(d) An authority that becomes the owner or operator of the facility as authorized in section 4 of this 2015 Act.**

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the Department of Environmental Quality and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 465.200 to 465.545 and 465.900.



(c) Nothing in ORS 465.200 to 465.545 and 465.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 465.200 to 465.545 and 465.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 465.400 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 465.200 to 465.545 and 465.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, willful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section.

**SECTION 10.** ORS 466.640 is amended to read:

466.640. (1) Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by:

(a) An act of war or sabotage or an act of God.

(b) Negligence on the part of the United States Government or the State of Oregon.

(c) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

**(c) An authority created under sections 1 to 8 of this 2015 Act is not liable to the State of Oregon or any person for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of the authority's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327 for a person that has entered into, and is in compliance with, an administrative agreement, judicial consent judgment or an administrative consent order.**

**SECTION 11.** ORS 468B.310 is amended to read:

468B.310. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section:

(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

**(c) An authority created under sections 1 to 8 of this 2015 Act is not liable to the State of Oregon or any person for any entry of oil into the waters of this state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the authority's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327 for a person that has entered into, and is in compliance with, an administrative agreement, judicial consent judgment or an administrative consent.**

## CONFORMING AMENDMENTS

**SECTION 12.** ORS 244.050 is amended to read:

244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, district attorneys and members of the Legislative Assembly.

(b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.

(c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

(d) The Deputy Attorney General.

(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each public university listed in ORS 352.002.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

- (H) State Forester.
- (I) State Geologist.
- (J) Director of Human Services.
- (K) Director of the Department of Consumer and Business Services.
- (L) Director of the Department of State Lands.
- (M) State Librarian.
- (N) Administrator of Oregon Liquor Control Commission.
- (O) Superintendent of State Police.
- (P) Director of the Public Employees Retirement System.
- (Q) Director of Department of Revenue.
- (R) Director of Transportation.
- (S) Public Utility Commissioner.
- (T) Director of Veterans' Affairs.
- (U) Executive director of Oregon Government Ethics Commission.
- (V) Director of the State Department of Energy.
- (W) Director and each assistant director of the Oregon State Lottery.
- (X) Director of the Department of Corrections.
- (Y) Director of the Oregon Department of Aviation.
- (Z) Executive director of the Oregon Criminal Justice Commission.
- (AA) Director of the Oregon Business Development Department.
- (BB) Director of the Office of Emergency Management.
- (CC) Director of the Employment Department.
- (DD) Chief of staff for the Governor.
- (EE) Administrator of the Office for Oregon Health Policy and Research.
- (FF) Director of the Housing and Community Services Department.
- (GG) State Court Administrator.
- (HH) Director of the Department of Land Conservation and Development.
- (II) Board chairperson of the Land Use Board of Appeals.
- (JJ) State Marine Director.
- (KK) Executive director of the Oregon Racing Commission.
- (LL) State Parks and Recreation Director.
- (MM) Public defense services executive director.
- (NN) Chairperson of the Public Employees' Benefit Board.
- (OO) Director of the Department of Public Safety Standards and Training.
- (PP) Executive director of the Higher Education Coordinating Commission.
- (QQ) Executive director of the Oregon Watershed Enhancement Board.
- (RR) Director of the Oregon Youth Authority.
- (SS) Director of the Oregon Health Authority.
- (TT) Deputy Superintendent of Public Instruction.
- (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- (i) Every elected city or county official.
- (j) Every member of a city or county planning, zoning or development commission.
- (k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.
- (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- (m) Every member of a governing body of a metropolitan service district and the executive officer thereof.
- (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- (o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.
- (p) Every member of the following state boards and commissions:
  - (A) Board of Geologic and Mineral Industries.

- (B) Oregon Business Development Commission.
- (C) State Board of Education.
- (D) Environmental Quality Commission.
- (E) Fish and Wildlife Commission of the State of Oregon.
- (F) State Board of Forestry.
- (G) Oregon Government Ethics Commission.
- (H) Oregon Health Policy Board.
- (I) State Board of Higher Education.
- (J) Oregon Investment Council.
- (K) Land Conservation and Development Commission.
- (L) Oregon Liquor Control Commission.
- (M) Oregon Short Term Fund Board.
- (N) State Marine Board.
- (O) Mass transit district boards.
- (P) Energy Facility Siting Council.
- (Q) Board of Commissioners of the Port of Portland.
- (R) Employment Relations Board.
- (S) Public Employees Retirement Board.
- (T) Oregon Racing Commission.
- (U) Oregon Transportation Commission.
- (V) Water Resources Commission.
- (W) Workers' Compensation Board.
- (X) Oregon Facilities Authority.
- (Y) Oregon State Lottery Commission.
- (Z) Pacific Northwest Electric Power and Conservation Planning Council.
- (AA) Columbia River Gorge Commission.
- (BB) Oregon Health and Science University Board of Directors.
- (CC) Capitol Planning Commission.
- (DD) Higher Education Coordinating Commission.
- (EE) Oregon Growth Board.
- (FF) Early Learning Council.
- (q) The following officers of the State Treasurer:
  - (A) Deputy State Treasurer.
  - (B) Chief of staff for the office of the State Treasurer.
  - (C) Director of the Investment Division.
- (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.
- (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- (t) Every member of a governing board of a public university with a governing board listed in ORS 352.054.

**(u) Every member of the board of directors of an authority created under sections 1 to 8 of this 2015 Act.**

(2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary

election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.

(6) If a statement required to be filed under this section has not been received by the commission within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the commission may impose a civil penalty as provided in ORS 244.350.

#### UNIT CAPTIONS

**SECTION 13. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.**

**Passed by House June 4, 2015**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 23, 2015**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

.....  
Kate Brown, Governor

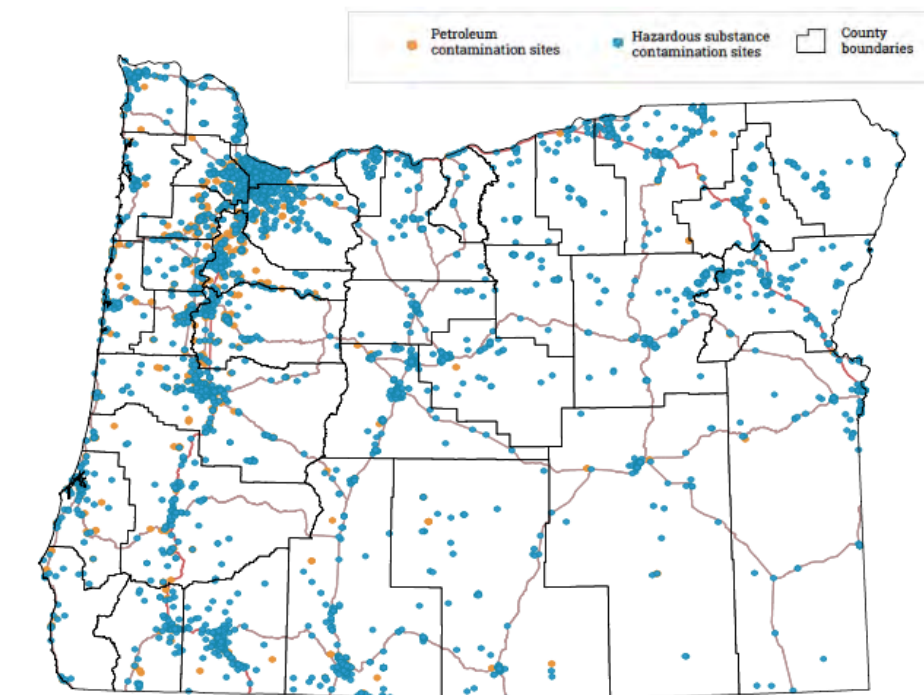
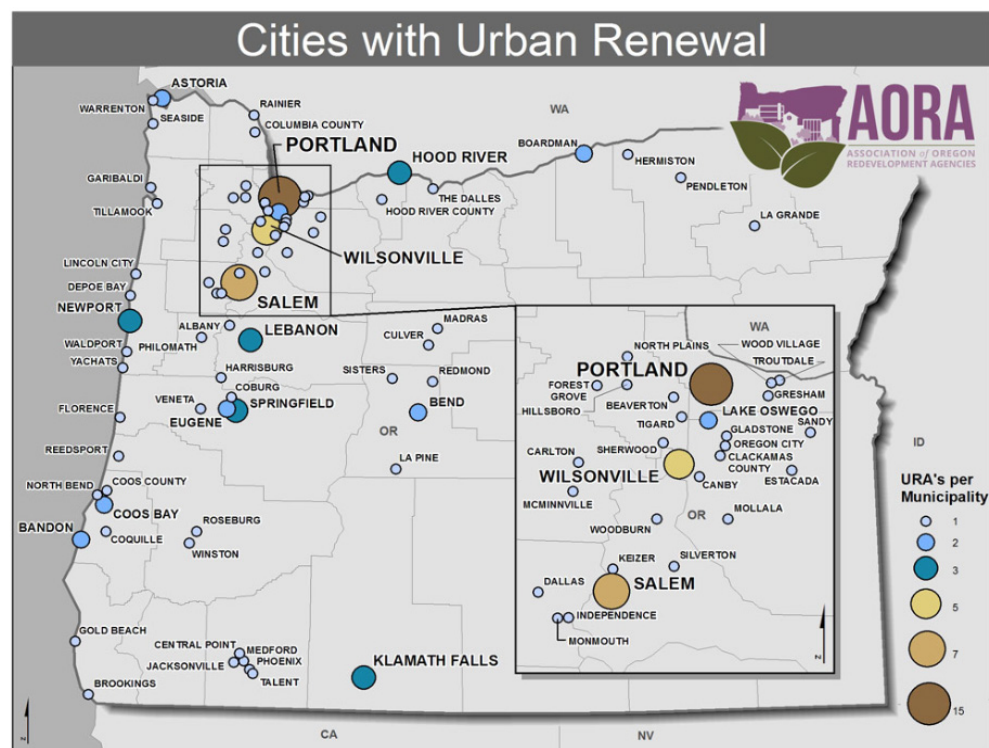
**Filed in Office of Secretary of State:**

.....M.,....., 2015

.....  
Jeanne P. Atkins, Secretary of State



## Appendix B. Comparison of URAs and Known Brownfield Sites in Oregon by Location



Source: Maul Foster and Alongi, 2014.

Fig. 18 Comparison Maps

Sources: AORA, 2014; Maul, Foster, and Alongi, 2014.





# Appendix C. Survey

Qualtrics Survey Software

5/29/16, 11:39 PM

## Section 1

Consent Disclaimer: Your participation in my research may benefit jurisdictions that have interest in remediating brownfields and utilizing land banking. I foresee no risks or discomfort to you as a participant, but you should feel free to decline to answer any question that you do not wish to answer. Your participation is completely voluntary and you may discontinue participation at any time. Data collected from this survey will be coded as numeric responses. All data will be secured on Qualtrics and as locked data files on my personal computer. If you have questions about my research or your participation in my research, please feel free to contact me or my project advisor- Kelsey Zlevor: [kzlevor@uoregon.edu](mailto:kzlevor@uoregon.edu); Rebecca Lewis (Advisor): [rlewis9@uoregon.edu](mailto:rlewis9@uoregon.edu). For information about your rights as a participant in my research, please contact Research Compliance Services at 541-346-2510.

By submitting this survey once completed, you are consenting to take part in this research.

**First, I'd like to ask some general questions about brownfield redevelopment in your jurisdiction.**

Please indicate the city you represent:

To your knowledge, has your city been involved in any local brownfield remediation projects within the past five years?

Yes

Don't Know

No

Please estimate how many remediation projects your city has started within the past five years:

Has your city ever facilitated a public engagement visioning process around the redevelopment of any of these brownfield sites?

Yes

Don't Know

No

If yes, please briefly describe the process and outcome:

If no, why not?

Would your city be interested in engaging in such a process?

Yes

Don't Know

No

Please estimate how many remediation projects your city has completed within the last five years:

Please estimate the amount of time (months or years) it took to complete the longest-running brownfields remediation project your city undertook in the last five years:

Please rank the following barriers in terms of difficulty to overcome based on your experience, with 1 being the most difficult and 7 being the least difficult:

Funding- not enough funding options provided by the state

Funding- not enough flexibility in local government funding to remediate

Personnel Availability/Staff Time

Public Engagement- agreeing on a collective vision

Determining Liability of a Contaminated Property

Legal Barriers

Other:

Does your city have an urban renewal agency that has assisted in brownfield redevelopment in the past 5 years?

Yes

Don't Know

No

Has your city applied for funding or technical support from the state in the last five years to support a brownfield remediation project?

Yes

Don't Know

No

Our jurisdiction does not have any eligible brownfields

Why did your city not apply for funding?

Process was too onerous

Didn't know about options

Ineligible

Did not need funding

Other:

Please explain:

Please explain:

If your city did not apply for funding, how did your jurisdiction fund the remediation project?

In the past five years, what funding and/or technical assistance tools has your city used to remediate brownfields? (choose all that apply)

EPA Assessment Grant

EPA Revolving Loan Fund Grant

EPA Cleanup Grant

An Urban Renewal Agency

Business Oregon Brownfield Redevelopment Fund

Business Oregon Brownfield Cleanup Fund

DEQ Orphan Fund

DEQ Prospective Purchaser Agreement

DEQ Site Specific Assessment Program

Other:

In the past five years, were there any funding and technical assistance tools your city applied for to put towards a remediation project but did not receive?

Yes

Don't Know

No

Which funding and technical assistance tools were not granted to your city's remediation process despite submitting an application? (choose all that apply)

Urban Renewal Agency

Business Oregon Brownfield Redevelopment Fund

Business Oregon Brownfield Cleanup Fund

DEQ Orphan Fund

DEQ Prospective Purchaser Agreement

DEQ Site Specific Assessment Program

EPA Assessment Grant

EPA Revolving Loan Fund Grant

EPA Cleanup Grant

Other:

In the last five-year period, which groups have been involved in your city's remediation projects? (choose all that apply)

An urban renewal agency

Council of Government

Private Landowner

Developer

Nonprofit

Don't Know

Other:

## Section 2

**Oregon passed House Bill 2734 as part of the 78th Oregon Legislative Assembly 2015 Session. Having gone into effect January 1, 2016, this bill is enabling legislation for local governments to develop land bank authorities (LBAs) to tackle local brownfields. The bill authorizes a city or county to organize a land bank authority that can take ownership of real property with immunity from legal liability for legacy contamination.**

Before receiving this survey, were you aware of House Bill 2734, landbanking for brownfields?

Yes

Don't Know

No

Are you familiar with land banks and their general purpose and powers?

Yes

No

Land banking is the aggregating of land parcels for future sale or development, and is most often used for tax delinquent properties. While the enabling powers to establish a landbank authority (LBA) are provided at a state level, it is still up to each city whether or not they want to establish an LBA. With the passing of Oregon House Bill 2734, an LBA "shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, re-utilizing or restoring brownfield properties," and the legislation exempts the land bank itself from liability for pre-existing contamination. Such legislation is unprecedented and Oregon may be paving a new policy approach to brownfield redevelopment.

Would you classify your city as having a need for a future land bank?

Yes



Don't Know

No

In your opinion, how would a landbank help your city?

How interested is your city staff and council in potentially establishing a land bank for brownfields?

Very interested

Moderately Interested

Slightly Interested

Not at all interested

Don't Know

What additional information would you need to have or like to know before considering implementing a land banking authority for brownfields?

What additional resources or opportunities would assist your city the most in remediating the city's brownfields?

### Section 3

Finally, I'd like to ask a couple questions about you.

Are there any additional comments or thoughts you would like to provide that you feel are important?

If you would like to receive follow up information on the final report, please provide your email address:

Would you be willing to participate in a brief follow-up phone conversation regarding your responses to this survey?

Yes

No

Please provide your phone number:

Thank you for your participation! Your feedback is incredibly useful in helping complete this research!

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## Appendix D. Getting Started Guide

### So You Want to Start A Land Bank

Deciding to pursue a land bank is a positive step for communities or localities suffering from blighted and contaminated properties. While a land bank has the ability to offer many benefits, a land bank is only as successful as its organization and structure permits. In order to aid jurisdictions in thinking through the land bank development process, the following tools are provided: a template organizational structure per HB 2734, a checklist of regulatory considerations, potential funding sources, potential partners, data management strategies, and suggested additional components to enable a land bank to go the extra mile.

#### Organizational Structure (Figure 19)

A jurisdiction should identify key champions and leadership for the jurisdiction to appoint to the Board of Directors for the land bank, and ensure enough individuals are able to commit to the following roles bearing in mind statutory term of service limits and the need to bring on new leadership. While diversity of stakeholders is built into the requirements of the Board of Directors, encouraging a mix of perspectives and backgrounds in the second tier of leadership fosters a more local and fair approach to land banking decisions that can meet the most community needs. Potential employees can include maintenance crews made up of local residents to tend to vacant properties.

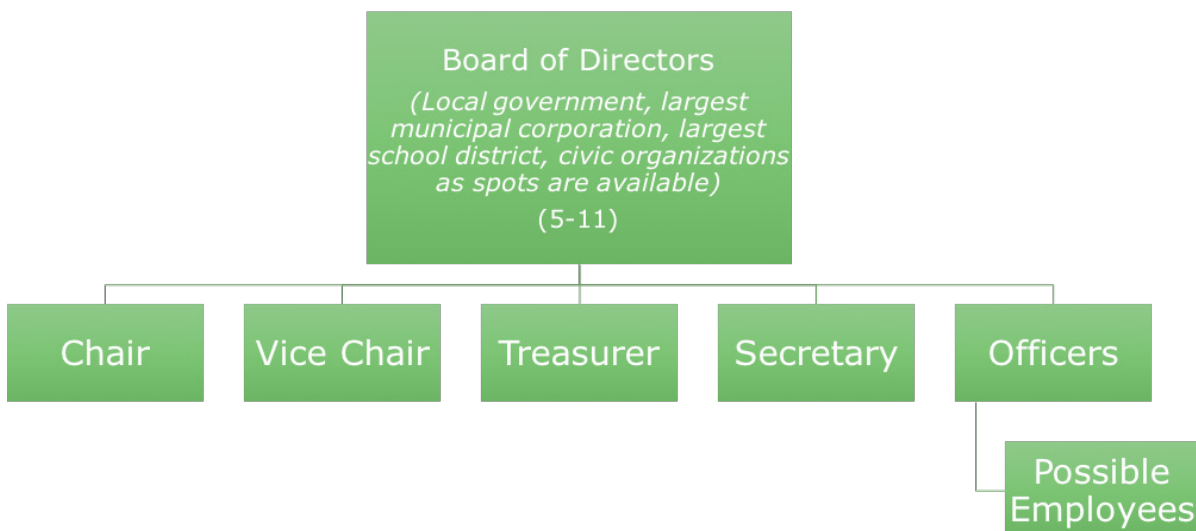


Fig. 19 Sample Organizational Chart  
Source: Kelsey Zlevor, 2016.

## Checklist of Considerations

Similar to a URA, a land bank requires several key documents and upfront thought processes around powers, mission, and operations. As part of its overall foundation and setup, a Land Bank should be prepared to draft and adopt the following:

- A Code of Regulations (By-Laws)
- Establishment of Land Bank geographic/tax lot boundaries
- A Conflict of Interest / Ethics Policy for Board and staff
- A Public Records and Records Retention Policy
- Operations Budget/Finance Structure
- A Purchasing Policy
- Policies & Procedures to guide day-to-day staff decisions
- Acquisition / Disposition policies
- End User Priorities
- Report drafting and submittal procedure for annual Governor and Legislative Assembly report
- Data Management strategy
- Cost recovery policies for remediation
- Set expectations with end-users, community at large (mission statement)

It is suggested that further guidance and inspiration for these documents be drawn from the Association of Oregon Renewal Agencies (AORA), or other general land banking agencies. While this research has established the obvious differences in a URA and a land bank, AORA provides excellent resources for drafting a budget, determining organizational leadership models, and solidifying acquisition processes.

## Potential Funding Sources and Partners

There are a variety of potential funding sources for land banks, from statutory authority and through its operations. One barrier to the development of a land bank may be the need for start-up funds. While the land bank can eventually become financially self-supporting over time through the sale and development of properties, upfront investment is required and can be uniquely structured based on jurisdiction.

The primary option is for these funds to come from an initial allocation from city government or grant funding. However, creative solutions may exist depending on the jurisdiction. In the case of Ohio, according to state statute, each county treasury can create the treasurer's delinquent tax and assessment collection (DTAC) fund (321.261). Under this provision, 2.5% of all delinquent property taxes collected by the county treasurer are deposited in the DTAC fund. The board of county commissioners appropriates these funds to the county treasurer, and as the commissioners see fit. Lucas County for example receives up to a 5% direct allocation from the DTAC fund, and funds their activities through an additional mix of property sales income from the sale of properties, and federal/state/private grant funding (Mann, 2013).

Further methods of acquiring start-up funds for a land bank are not a part of this work, but are certainly an area of future research.

A land bank should also consider partnerships and agreements with local groups to obtain funding, gain political support, and coordinate acquisition decisions, demolition partnerships, and maintenance of land bank-owned properties. A suggested list of partners, including but not limited to, are:

- Hospital Systems
- Universities
- Public Schools
- Police Departments
- Community Development Corporations
- Non-Profit Organizations
- Small Businesses, Business Associations/Alliances
- Main Street programs

## Data Management Strategies

Another key to a fully functional land bank is the need for an organized data management strategy. A computer program that enables the storage of property portfolios is ideal, whether built in-house or purchased. A general outline of suggested tools/functions are as follows:

- Property Assessment Tool (visualize and label tax lots, parcels)
- Online Photo Storage (Google's Picasa; to visualize properties)
- Land Bank Property Database (Excel)
- Include project status, partners, address, lot size, lot type, year acquired
- Land Bank Property Reports (Access)
- GIS Mapping Tools (ESRI)
- Financial Reporting Tools (Intuit Quickbooks) (Woods, 2015)

The ability to quickly and easily access this data will be especially crucial to comply with HB 2734's requirement to submit a yearly report to the Governor.

## Tying It All Together

While taking a land bank to the next level may seem premature when just getting a land bank up and running seems like a Herculean feat, considering the broader implications of what a land bank can do is a valid visioning exercise at the beginning of the process. One immeasurable facet of land banking for brownfields that has not been discussed is potential to increase civic pride and engagement. Aside from merely removing blight and potential hazards to human health, these sites have the capacity to become catalysts for hope and inspiration for public officials and residents. Jurisdictions can consider going the extra mile to think creatively about what their land bank can do to further this mission of creating inspiring places out of decay.

One example is to tie in an employment program similar to the Genesee County Land Bank. While Genesee County's land bank focuses on abandoned homes with yards, the County employs a Blight Crew, made up of paid local residents, to landscape and upkeep these properties before sale to homeowners or developers. Not only does this create local jobs, but it engages the public with the land bank and fosters a sense of pride in the community.

Another suggestion is to consider the role of public art in the redevelopment process. By either writing in a public art requirement into the land bank's Code of Regulations or Redevelopment Policies, or partnering with a local community group to include public art or gardens into redeveloped properties, the land bank is not only fulfilling its general remediation purposes, but is fostering a deeper sense of place on reclaimed properties. The sheer newness of HB 2734 enables jurisdictions to think outside the box for what their land bank can do and represent in their communities, and is an opportunity that should not be wasted.

Finally, jurisdictions can consider how to potentially merge with one another to tackle the issue of smaller cities having a harder time establishing a land bank. By creating cross-jurisdictional land banks and establishing supporting state statute to do so, more cities can have access to a land bank's tools.





## Appendix E. Draft Ordinance

### **ORDINANCE CREATING THE XXXX LAND BANK AUTHORITY<sup>1</sup>**

**BE IT ORDAINED**, by the Board of Commissioners that Land Bank Authority, Section XX through XX of the Code are hereby enacted as follows:

#### **Division 1. General Provisions**

##### **Sec. 103-1. Short title.**

This Ordinance shall be known and may be cited as the "Ordinance Establishing the Land Bank Authority."

##### **Sec. 103-2. Declaration.**

The Board hereby establishes the XXXX Land Bank Authority which shall be an agency of XXXX.

##### **Sec. 103-3. Definitions.**

The following words and terms shall have the meanings set forth in this section, except where otherwise specifically indicated:

*Board of Commissioners* means the Board of Commissioners for XXXX, Oregon.

*Board of Directors* means the Board of Directors of the XXXX Land Bank.

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<sup>1</sup> Adapted from Proposed Cook County Land Bank Draft Ordinance, 2013  
[www.safeguardproperties.com/News/All\\_Client\\_Alerts/2013/01/~media/ACA-PDF/2013/January/Cook%20County%20Land%20Bank%20Ordinance%20-Draft%2012-12-121.ashx](http://www.safeguardproperties.com/News/All_Client_Alerts/2013/01/~media/ACA-PDF/2013/January/Cook%20County%20Land%20Bank%20Ordinance%20-Draft%2012-12-121.ashx)

*Brownfield* means a real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

*Chairperson* means the chairperson of the XXXX Land Bank Board.

*Director* means the Executive Director of the XXXX Land Bank.

*Fiscal Year* means the fiscal year of the Land Bank, which shall begin on of each year and end on the following November 30<sup>th</sup>.

*Land Bank* means the XXXX Land Bank Authority, created by this Ordinance pursuant to the City's home rule powers.

*Member* means a member of the Board of Directors.

*Person* means any individual, corporation, organization, government, governmental agency, business trust, estate, trust, partnership, association and any other legal entity

*President* means the President of the Board of Commissioners.

*Real Property* means all land and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

#### **Sec. 103-4. Purpose.**

The purpose of this Ordinance is to create the XXXX Land Bank Authority that will use available resources to facilitate the return of vacant, abandoned, and contaminated properties to productive use thereby combating community deterioration, creating economic growth, and stabilizing the housing and job market.

The Land Bank will acquire, hold, and transfer interest in real property throughout XXXX as approved by the Board of Directors for the following purposes: to promote redevelopment and reuse of vacant, abandoned, and contaminated properties; support targeted efforts to stabilize neighborhoods; stimulate residential, commercial and industrial development; all in ways that are consistent with goals and priorities established by this Ordinance, local government partners and other community stakeholders.

#### **Sec. 103-5. Creation and Legal Status of Land Bank.**

The County Board hereby establishes the XXXX Land Bank Authority which shall be an agency of and funded by XXXX. All personnel, facilities, equipment and supplies within the Land Bank shall be governed by a Board of Directors as provided herein. The Board of Directors shall be accountable to the President and the County Board.

#### **Sec. 103-6. Principal Office.**

The principal office of the Land Bank shall be at a location within the geographical boundaries of XXXX, as determined by the Board.

**Sec. 103-7. Tax-exempt Status.**

The City declares that the activities of the Land Bank are governmental functions carried out by political subdivision of the State as described in Section 115 of Title 26 of the United States Internal Revenue Code. The City also intends the activities of the Land Bank to be governmental functions carried out by a political subdivision of this State, exempt to the extent provided under Oregon law from taxation by this State.

**Sec. 103-8. Compliance with Law.**

The Land Bank shall comply with all applicable federal and state laws, rules, regulations, and orders.

**Division 2. Land Bank Authority Board of Directors and Staff**

**Sec. 103-9. XXXX Land Bank Board of Directors.**

The Land Bank shall be governed by a Board of Directors that shall be appointed by the President, subject to approval by the Board of Commissioners, within 45 days of the adoption of this Ordinance. Board of Directors shall be residents of XXXX. The Board of Directors must be an odd number not less than five or more than 11. The Board sets its own rules, Chair, Vice Chair, Treasurer, Secretary, and Officers. The LBA may hire employees as appropriate

**Sec. 103-10. Appointment of Members.**

Candidates for the Board of Directors appointed by the President shall be selected from the following categories.

1. (a) One (1) member of local government;
2. (b) One (1) member of the largest municipal corporation that is not a school;
3. (c) One (1) representative from the largest school district;
4. (d) Five-eight (5-8) representatives from civic or local organizations

**Sec. 103-11 Term of Office.**

Except as otherwise provided in this section, the members of the Board of Directors appointed under Section 103-12 shall be appointed for a term of four (4) years.

1. The Members appointed shall serve a term of four (4) years.
  - a. Each Member shall serve until a successor is appointed.
  - b. Any Member who is appointed to fill a vacancy, other than a vacancy caused by the expiration of the predecessor's term, shall serve until the expiration of his or her predecessor's term.

2. A Member may not serve more than three (3) consecutive full terms.

**Sec. 103-12. Chairperson/Members of the Board of Directors.**

a. The Board of Directors shall select the initial Chairperson of the Board from among the initial members. The Chairperson shall serve one X year term as Chairperson and, thereafter, the Board of Directors shall annually elect a Chairperson from the members.

1. The Chairperson shall preside at meetings of the Board of Directors, and is entitled to vote on all matters before the Board of Directors.

2. A Member may be elected to serve successive terms as Chairperson.

**Sec. 103-13. Meetings.**

The Board of Directors shall conduct its first meeting no later than ninety (90) days after adoption of this Ordinance. The place, date, and time of the Land Bank meetings shall be determined at the discretion of the Board of Directors. All meetings of the Board of Directors shall comply with the Oregon Open Meetings Act.

**Sec. 103-14. Bylaws, and Policies and Procedures.**

The Board of Directors shall adopt bylaws, procedures and policies consistent with the provisions of this Ordinance within 120 days from the first meeting of the Board of Directors.

**Sec. 103-15. Quorum and Voting.**

A quorum shall be necessary for the transaction of any business by the Board of Directors. A majority of the Members of the Board of Directors shall constitute a quorum. The Board of Directors shall act by a majority vote of the Members at a meeting at which a quorum is present, except as otherwise provided in this Ordinance.

**Sec. 103-16. Records of Meetings.**

Minutes of all meetings of the Board of Directors and its Committees shall be made and maintained as required by the OMA.

**Sec. 103-17. Board of Directors Actions.**

The Board of Directors shall do all of the following not inconsistent with Oregon law:

- (a) adopt, amend and/or repeal rules and policies and procedures governing the Board of Directors and its actions and meetings, and adopt, amend and/or repeal policies and procedures to implement day-to-day operation of the Land Bank, including policies governing any staff of the Land Bank;

- (b) elect additional officers, including, but not limited to, initial officers who shall be elected at the first meeting of the Board of Directors, in accordance with the bylaws;

- (c) provide for a system of accounting;
- (d) adopt or amend the Land Bank's budget to submit annually to the Board of Commissioners for approval and adoption in a time frame mandated by the Budget Director;
- (e) adopt, amend and/or repeal policies and procedures for contracting and procurement;
- (f) commission, collect, and receive data from public, private, professional and volunteer sources to compile an inventory an analysis of desirable properties for acquisition;
- (g) establish banking arrangements for the Land Bank as per Sec. 103-58 of this Ordinance.

**Sec. 103-18. Fiduciary Duty.**

The Members of the Board of Directors are under a fiduciary duty to conduct the activities and affairs of the Land Bank in the best interests of the residents of XXXX, including the safekeeping and use of all Land Bank monies and assets. The members of the Board of Directors shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

**Sec. 103-19. Compensation.**

The Members of the Board of Directors shall receive no compensation for the performance of their duties. The Land Bank may reimburse members of the Board of Directors for expenses incurred in the discharge of their official duties as provided by the Board.

**Sec. 103-20. Executive Director.**

The Board of Directors shall select and retain an executive director. The Director shall administer the Land Bank in accordance with the operating budget approved by the Cook County Board of Commissioners, general policy guidelines established by the Board of Directors, other applicable governmental procedures and policies, and this Ordinance. The Director shall be responsible for the day-to-day operations of the Land Bank, the control, management, and oversight of the Land Bank's functions, and supervision of all Land Bank contractual agreements.

**Sec. 104-21. Employees.**

The Executive Director may contract for the services of any staff deemed necessary to carry out the duties and responsibilities of the Land Bank in accordance with the policies and procedures established by the Board. Such staff shall be retained pursuant to contracts.

**Division 3. General Powers of Land Bank**

**Sec. 103-22. General Powers of the Land Bank.**

The County, to the full extent of its constitutional and statutory authority, confers upon the Land Bank the authority to do all things necessary or convenient to implement the purposes,

objectives, and provisions of this Ordinance, or the purposes, objectives, and powers granted to the Land Bank by any federal, state or local government unit:

- (a) to adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;
- (b) to acquire by purchase, donation, or other transfers and to hold, lease, manage, and dispose of Real Property categorized as a brownfield, or any interest therein, in furtherance of the public purposes of the Land Bank;
- (c) to borrow money from private lenders, from cities or counties, from the state or from federal government funds, subject to limitations established by the County Board, to further or carry out the Land Bank's public purpose by executing leases, trust agreements, agreements for the sale notes, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, and such other agreements or instruments as may be necessary or desirable, in the judgment of the Land Bank, to evidence and to provide security for such borrowing.
- (d) to make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, gifts, guarantees, or other aid or financial assistance in furtherance of the Land Bank's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;
- (e) to enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the Land Bank;
- (f) as security for repayment of any note, or other obligations of the Land Bank, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the Land Bank, including, but not limited to, Real Property, fixtures, and revenues or other funds;
- (j) to receive and administer gifts, grants, and bequests of money and Real Property consistent with the purpose of the Land Bank;
- (k) to use any Real Property or fixtures or any interest therein or to rent, license or lease such Real Property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of grant options for any such Real Property in any manner as it deems to be in the best interests of the Land Bank and the public purpose thereof;
- (l) to enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of Real Property;
- (m) to not be held liable for contaminated properties in the Land Bank's purview if the site contains legacy contamination;



(n) to enter into contracts, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements with a Party regarding the disposition of Land Bank properties located within their boundaries;

(o) to finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage Real Property or rights or interests in Real Property, and to pay the costs of any such project from the proceeds of revenue bonds, loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the Land Bank is authorized to receive, accept, and use;

(p) to grant or acquire a license, easement, lease (as lessor or lessee), or option with respect to Real Property of the Land Bank;

(q) to enter into contracts with nonprofit community land trusts, including, but not limited to, long-term lease contracts;

(r) to contract for site analysis and remediation services and engage personnel as necessary, to be paid from the funds of the Land Bank. The Board shall determine the qualifications, duties, and compensation of those it contracts with and employs;

(s) to remediate environmental contamination on any Real Property held by the Land Bank;

(t) to acquire, hold and manage property pursuant to this Ordinance;

(u) to dispose of property pursuant to this Ordinance; and;

(aa) to do all other things necessary or convenient to achieve the objectives and purposes of the Land Bank or other laws that relate to the purposes and responsibilities of the Land Bank.

#### **Division 4. Real Property Acquisition, Management and Disposition**

##### **Sec. 103-23. Acquisition of Real Property.**

(a) The Land Bank may acquire Real Property or rights or interests in Real Property by gift, bequest, transfer, exchange, foreclosure, purchase, purchase contracts, lease purchase agreements, installment sales contracts, land contracts, tax sale, scavenger sale or otherwise, on terms and conditions and in a manner the Land Bank considers proper.

(b) The Land Bank may acquire any property conveyed to it by the State of Oregon, a foreclosing governmental unit, a unit of local government, an intergovernmental entity created under the laws of the State of Oregon, or any other public or private person, including, but not limited to, property without clear title.

(c) All deeds, mortgages, contracts, leases, purchases, or other agreements regarding property of the Land Bank, including agreements to acquire or dispose of real property, shall be approved by and executed by the Land Bank, in the name of the County.

**Sec. 103-24. Execution of Legal Documents Relating to Property.**

All deeds, mortgages, contracts, easements, leases, licenses, franchises, purchases, covenants or other agreements regarding Real Property of the Land Bank, including agreements to acquire or dispose of Real Property, shall be executed in the name of the County by the Land Bank and approved in accordance with the bylaws of the Land Bank.

**Sec. 103-25. Holding and Managing Property.**

The Land Bank may control, manage, maintain, operate, repair, lease as lessor, license, secure, prevent the waste or deterioration of, demolish, and take all other actions necessary to preserve the value of the Real Property it controls on behalf of the County. The Land Bank shall maintain all such Real Property held by the Land Bank in accordance with applicable laws and codes. Such Real Property shall be inventoried and classified by the Land Bank according to suitability for use. The inventory shall be maintained as a public record and shall be filed electronically and in the principal office of the Land Bank.

**Sec. 103-26. Property Disposition.**

On terms and conditions, and in a manner and for an amount of consideration the Land Bank considers proper, fair, and reasonable, including for no monetary consideration if appropriate, the Land Bank may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of Real Property or rights or interests in Real Property which the Land Bank controls and the County holds a legal interest to any public or private Person. The transfer and use of property under this section and the exercise by the Land Bank of powers and duties under this Ordinance shall be considered a necessary public purpose and for the benefit of the public.

**Sec. 103-27. Transactions.**

Transactions shall be structured in a manner that permits the Land Bank to enforce contractual agreements, real covenants, and the provisions of any subordinate financing held by the Land Bank pertaining to development and use of the Real Property.

**Sec. 103-28. Disposition of Proceeds.**

Any proceeds from the sale or transfer of Real Property by the Land Bank shall be retained, expended, or transferred by the Land Bank as determined by the Board in the best interests of the Land Bank and in accordance with applicable laws and Agreements.

**Division 5. Books, Records, Finances and Expenditures**

**Sec. 103-29. Land Bank Records.**

The Land Bank shall keep and maintain at the principal office of the Land Bank all documents and records of the Land Bank. The records of the Land Bank, which shall be available to the public, shall include, but not be limited to, a copy of this Ordinance, the Land Bank's bylaws, and any agreements, along with any amendments thereto. The records and documents shall be maintained and shall be delivered to any successor entity.

**Sec. 103-30. Financial Statements and Reports.**

The Land Bank shall cause to be prepared, at the Land Bank's expense, audited financial statements (balance sheet, statement of revenue and expense, statement of cash flows, and changes in fund balance) on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm.

**Sec. 103-31. Annual Budget.**

(a) The Land Bank shall prepare an annual budget in a manner and under a time frame mandated by the County Budget Director.

(b) The Board of Directors shall recommend, approve and submit an annual budget to be included in the President's Executive Budget Recommendation for approval by the County.

(c) The obligations and expenditures of the Board of Directors shall conform to the County's Annual Appropriation Ordinance; provided that the County Board retains the authority to impose additional limitations. Any commitment, contract or other obligation entered into by the Board in derogation of this Section shall be voidable by the County Board.

**Sec. 103-32. Deposits and Investments.**

The Land Bank shall deposit funds of the Land Bank in a special fund to be held by the Treasurer of the County, to be designated as the "Land Bank Fund" and to be expended exclusively for the operation of the Land Bank.

**Sec. 103-33. Disbursements.**

Expenditures of funds from the Land Bank Fund shall be in accordance with guidelines established by the Board of Directors.

**Sec. 103-34. Annual Report.**

(a) The Board of Directors shall submit to the Governor and Legislative Assembly, within six months after the end of each Fiscal Year, a report which shall set forth a complete and detailed operating and financial statement of the Land Bank during such Fiscal Year.

(b) Included in the report shall be any recommendations for additional legislation or other action which may be necessary to carry out the mission, purpose and intent of the Land Bank.

**Sec. 103-35. Management of Funds.**

The Director, or other individual designated by the Board of Directors, shall be authorized to make deposits and withdraw funds from the Land Bank Fund for the management of sales proceeds, County revenue, and other Land Bank funds. Standard accounting procedures shall be used in the management of accounts and approved by the Cook County Comptroller.

**Sec. 103-36. Authorized Expenditures.**

The Land Bank shall in its discretion and within its budget, expend funds as necessary to carry out the powers, duties, functions, and responsibilities of a land bank under this Ordinance.

**Division 6. Dissolution, Distribution of Assets**

**Sec. 103-27. Dissolution.**

Upon determining that the purposes of the Land Bank have been completed and that there is no longer a need for the Land Bank's existence, the Board of Commissioners may repeal this Ordinance and dissolve the Land Bank, provided that the effective date of any such repeal shall provide sufficient time for the Land Bank to carry out the provisions set forth in Sec. 103-64.

**Sec. 103-38. Distribution of Assets.**

As soon after notice of the repeal of this Ordinance, the Land Bank shall finish its affairs as follows:

- (a) all of the Land Bank's debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Land Bank and distribution of its assets shall be paid first; and
- (b) the remaining Real Property and personal property owned by the Land Bank, shall be distributed to any successor entity. In the event that no successor entity exists, the remaining Real Property and personal property, and other assets of the Land Bank, shall become assets of the County, unless provided otherwise in any applicable Agreements.



## References

- Alexander, Frank S. *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks*. Local Initiatives Support Corporation, 2005. Print.
- Alexander, Frank S. *Land Banking as Metropolitan Policy*. Brookings, 2008. Print.
- Alexander, Frank S. *Land Banks and Land Banking*. Rep. 2nd ed. Flint: Center for Community Progress, 2015. Print.
- "Best Practices for Urban Renewal Agencies in Oregon." AORA. Association of Oregon Redevelopment Agencies, Jan. 2014. Web. 2 Mar. 2016.
- "Brownfields Program." Business Oregon. Business Oregon, 2015. Web. 4 Feb. 2016.
- "Brownfield Redevelopment." Maul, Foster, and Alongi. Maul, Foster, and Alongi, 2014. Web. 3 Jan. 2016.
- Buchanan, Sariyah. "Why Marginalized Communities Should Use Community Benefit Agreements as a Tool for Environmental Justice." *Journal of Science, Technology, and the Environment* 19 (2010): 32-50. Web. 2 Mar. 2016.
- City of Hillsboro Economic Development Council: 4th Main. Hillsboro: AORA, 2015. Print.
- DeSousa, Christopher A. "The Greening of Brownfields in American Cities." *Journal of Environmental Planning and Management* 47.4 (2004): 579-600. Web. 4 Mar. 2015.
- DeSousa, Christopher "Policy Performance and Brownfield Redevelopment in Milwaukee, Wisconsin." *The Professional Geographer* 57.2 (2005): 312-27. Web. 4 Mar. 2015.
- DeRobertis, Cecilia. *CERCLA Liability and Local Government Acquisitions and Other Activities*. Environmental Protection Agency, 2011. Office of Site Remediation Enforcement. United States Environmental Protection Agency, Mar. 2011. Web.
- Farris, J. Terrence. "The Barriers to Using Urban Infill Development to Achieve Smart Growth." *Housing Policy Debate* 12.1 (2001): 1-30. Tandf Online. Web. 2 Mar. 2016.
- Golden, Kate. "Wasted Places: Slow, Underfunded EPA Program Falls Short in Toxic Site Cleanups." *Wisconsin Watch*. Wisconsin Center for Investigative Journalism, 23 Sept. 2012. Web. 4 Mar. 2015.
- Kildee, Dan. *Land Banking 101*. U.S. HUD, 2010. Print.

- Land Bank Legislation Support Testimony (2015) (testimony of David Rabbino). Print.
- Lincoln City Urban Renewal Agency: Jennifer L Sears Glass Art Studio. Lincoln City: AORA, 2015. Print.
- Mann, David. "Land Bank 101:The Basics of Land Banking in Ohio." Brownfields Conference. 2013. Web.
- North Clackamas Revitalization Area Plan. Clackamas County Development Agency, 2008. Print.
- Office of Sustainable Communities. Smart Growth and Economic Success: Investing in Infill Development. U.S. EPA Smart Growth Program, 2014. Print.
- "Oregon Legislature Boosts Brownfields Cleanups." Portland Business Journal. Sustainable Business Oregon, 10 Mar. 2016. Web. 08 Apr. 2016.
- Paull, Evan, and Seth Otto. Inventing The Brownfields Land Bank. Maul, Foster, and Alongi, 2013. Print.
- Schilling, Joseph. Strategic Lessons in Sustainable Community Building— the Groundwork USA Network. Center for Community Progress, 2013. Print.
- "State Voluntary Cleanup Programs." EPA- Brownfield Enforcement. Environmental Protection Agency, 3 Dec. 2014. Web. 6 Mar. 2015.
- State Policy Toolkit: State Land Bank Enabling Legislation. Rep.: Smart Growth America, 2008. Print.
- S. 2734 (2015) (enacted). Print.
- Urban Renewal in Oregon. Lake Oswego: Elaine Howard Consulting, LLC., 2012. Print.
- U.S. EPA. Brownfields Road Map to Understanding Options for Site Investigation and Cleanup. Publication. 5th ed. Office of Solid Waste and Emergency Response, 2011. Print.
- "Village of Schaumburg – Progress Through Thoughtful Planning." Tax Increment Financing (TIF) Explained. Village of Schaumburg. Web. 9 Mar. 2016.
- Woods, J. Justin. "Guest Post: 4th Generation Land Banks: Redeveloping Brownfields." Brownfield Listings. Sept. 2015. Web. 02 May 2016.